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In The

Supreme Court of the United States

October Term, A. D., 1966

No. 812

MERLE E. PARKER
An Individual
and
THE FOUNDATION FOR DIVINE MEDITATION,
INCORPORATED,
A Corporation

Petitioners.

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit and Reasons Relied Upon for Allowance of Writ.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit and Reasons Relied Upon for Allowance of Writ.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Merle E. Parker, an individual, and The Foundation For Divine Meditation, Inc., a corporation, respectfully petition this Honorable Court for a writ of certiorari to review a decision of the United States Court of Appeals for the Eighth Circuit.

I. OPINIONS BELOW

Eighth Circuit: The opinion of the court below in this case has not been officially reported. It is reproduced in Appendix, infra, pp 15 - 32.

Tax Court: Memorandum Opinion TC Memo 1965-77 has not been officially reported. It is reproduced in Appendix, infra, pp 33 - 73.

II. JURISDICTIONAL STATEMENT

1. The decision of the court below was entered on September 9, 1966.

2. The Constitutional questions involved were raised at the outset in petitions to the Tax Court filed July 3, 1962, which are reproduced in Appendix, infra, pp 80 - 85.

3. The question of misapplication of Section 501 (c) (3) of the Internal Revenue Code of 1954 was raised in the original petition (supra). and was re-stated in the petition for review by the United States Court of Appeals. (Appendix, infra, pp 74 - 79.)

4. The question of misapplication and misinterpretation of a landmark decision of this Court was raised in Petitioners' brief as indicated in the decision of the United States Court of Appeals. (Appendix, infra, pp 17 and 19.)

5. The Constitutional questions (supra) were re-stated in the petition for review by the Court of Appeals. (supra).

6. The jurisdiction of this Court is invoked under provisions of Title 28 U. S. C. A. Section 1254.

III. QUESTIONS PRESENTED

1. Is the decision of the court below, affirming the findings of the Tax Court that the corporate petitioner, The Foundation For Divine Meditation, Inc. is not entitled to the exempting provisions of the taxing act as set forth in Section 501 (c)(3) of the Internal Revenue Code of 1954, a misapplication and misinterpretation of the intentions of the Congress when it provided that certain nonprofit organizations should not be taxed upon their income?

2. Is the decision of the court below in direct conflict with the decision of this Court in *University* v. *People*, 99 U. S. 309?

3. Is the decision of the court below in direct conflict with the decision of this Court in *Trinidad* v. *Sagrada Orden de Predicadores*, 263, U. S. 578?

4. Does the decision of the court below violate the rights of the corporate petitioner under provisions of the First Amendment to the Constitution?

5. Does the decision of the court below violate the rights of the individual petitioner, the Reverend Dr. Merle E. Parker, under provisions of the due process clause of the Fifth Amendment?

IV. STATUTES AND RULES INVOLVED

1. Section 501 of the Internal Revenue Code of 1954 in its pertinent part provides:

"(a) Exemptions from taxation. — An organization described in subsection (c) or (d) or section 401 (a) shall be exempt from taxation under this

subtitle unless exemption is denied under Section 502, 503 or 504.

"(c) List of exempt organizations. — The following organizations are referred to in subsection (a):

"(3) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office."

2. The First Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. The Fifth Amendment provides in its pertinent part:

"No person shall be . . . deprived of life, liberty, or property without due process of law . . ."

V. STATEMENT OF THE CASE

This case originated with the filing of petitions by the joint petitioners here seeking a redetermination by

the Tax Court of the United States of deficiencies set forth by the Commissioner of Internal Revenue. The deficiency notices were dated April 9, 1962, and petitions were filed in the Tax Court on July 3, 1962. The petitions are reproduced in Appendix, infra, pp 80 to 85.

The corporate petitioner, The Foundation For Divine Meditation, Inc., claimed statutory exemption from payment of income taxes on its net income, and statutory exemption from filing information returns or tax returns.

The individual petitioner, the Reverend Dr. Merle E. Parker, claimed that he owed no tax of any kind, and that any taxes due on past income had been paid in full when due. He further alleged that the assessment against him was based upon conjecture and capriciousness, unsupported by any evidence.

The case was docketed and came on for trial in the Tax Court sitting in Los Angeles, California, on October 23rd and 24th, 1963, before the Hon. Russell Train, judge.

The basic facts were stipulated and were never in dispute. The interpretation and application of those facts formed the basis of the entire case. The Commissioner of Internal Revenue, through the United States attorneys, claimed the corporate petitioner was not entitled to the exemption because it derived a substantial portion of its income from the publication and sale of writings either edited or written by its presiding officer, (the individual petitioner here), the Reverend Dr. Merle E. Parker.

The parties were in essential agreement that the corporate petitioner was a nonprofit corporation, that its income had not inured to the benefit of any private shareholder or individual, and had not been used to influence legislation, or for any other proscribed activity.

Virtually the entire controversy centered around whether the corporation's source of income made it ineligible for the tax exemption provided by the excepting clause of the taxing act.

The individual petitioner, the Reverend Dr. Merle E. Parker, was involved only to the extent that the Commissioner claimed that certain "unidentified withdrawals" from the corporation's account between 1955 and 1959 had inured to his personal benefit. The Government did not offer to present any testimony of any witness to substantiate this claim.

The Commissioner also claimed that expenses for legal fees paid by the corporation to defend Dr. Parker in a criminal case wherein he was acquitted constituted "taxable income" to him.

On July 28, 1965, the Tax Court filed its opinion (Appendix, infra, pp 33 - 73.) The opinion affirmed all allegations of the Commissioner.

On October 26, 1965, the joint petitioners filed in the the United States Court of Appeals for the Eighth Circuit a petition to review the decision of the Tax Court.

The case came on for hearing on May 12, 1966. On September 9, 1966, the Court of Appeals filed its opinion, reversing in part, affirming in part, and remanding the case to the Tax Court for recalculation.

On September 14, 1966, petitioners filed a petition for a stay of mandate, pending the filing of their petition for a Writ of Certiorari in this Court.

Jurisdiction of the United States Court of Appeals for the Eighth Circuit was invoked under Section 7482 (b) (2) of the Internal Revenue Code of 1954.

REASONS FOR GRANTING THE WRIT

1. The decision of the United States Court of Appeals for the Eighth Circuit in the instant case strikes a deadly blow at a fundamental and long established custom of exempting from taxation the net income of churches and religious organizations when no substantial part of such income is used to influence legislation and no part of it inures to the benefit of any private shareholder or individual. The Court of Appeals has placed an interpretation upon the excepting clause of the Taxing act which, if allowed to stand, will pave the way for attack after attack by the Commissioner of Internal Revenue upon churches and religious organizations which derive any substantial amount of income from the sale of their religious literature, magazines, or other items intended to further activities for which the religious corporations were created.

The decision of the Court of Appeals in this case is of gravest public concern and affects the rights and interests of the vast majority of the citizens of this Nation. The decision sanctions the departure by the Tax Court from its own prior decisions in cases involving questions identical to those presented in the case at bar. Its action obviously calls for an exercise of this Court's power of supervision.

2. The decision of the Court of Appeals in the instant case is in direct conflict with the decision of this Court in *University* v. *People*, 99 U. S. 309, 324, where it said:

> "The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes, in the fullest and clearest sense."

In the instant case both the Tax Court and the Court of Appeals conceded that the corporate petitioner is a religious organization, a non-profit corporation, and that none of its income inured to the benefit of any private shareholder or individual. However, both courts below ruled that the fact that the petitioner obtained income from publications to which it holds the copyrights, and which pertain to its doctrines and teachings, renders it ineligible for the exemption from payment of income taxes on its net income.

3. The decision of the Court of Appeals is in direct conflict with the decision of this Court in *Trinidad* v. *Sagrada de Predicadores,* 263 U. S. 578, where this Court ruled that a corporation sole formed in the Philippine Islands for religious, charitable and educational purposes, was entitled to exemption from payment of income taxes on its net income, even though the principal source of that income was from activities normally carried on for profit.

The revelant facts of the *Trinidad* case are these. The Commissioner of Internal Revenue levied a tax on the net income of the corporation sole, and it paid the tax under protest and then sued to recover. It prevailed in the Philippine courts, both trial and appellate. The Commissioner petitioned this Court for a writ of certiorari. (260 U. S. 711). The case was heard on the merits on October 5, 1923, and was decided on January 14, 1924.

Of a total net income of 254,702 pesos, the corporation derived 240,797 pesos from three sources which were (1) rent on lands it owned, (2) interest on money it lent to private borrowers, and (3) dividends on stocks it owned in private corporations. This represented 94.54 percent of its total net income. The other 5.46 percent came from alms for mass and incidental sales of wine, chocolate and

other items. This Court summarized its reasoning in *Trinidad*, (page 582 supra) as follows:

> "According to the Philippine law under which it is created, all of its properties are held for religious, charitable and educational purposes; and according to the facts stipulated it devotes and applies to those purposes all of the income—rents, dividends and interest —from such properties. In using the properties to produce the income, it therefore is adhering to and advancing those purposes, and not stepping aside from them or engaging in a business pursuit . . .
>
> . . . Our conclusion is that the plaintiff is organized and operated exclusively for religious, charitable and educational purposes within the meaning of the excepting clause."

In the instant case the Court of Appeals appears to have based its decision to affirm the findings of the Tax Court to the effect that the petitioner is not entitled to the exemption entirely upon the contention that the petitioner's sale of its religious literature to obtain funds with which to carry on its activities renders it ineligible for the exemption. This reasoning is diametrically opposed to that of this Court in *Trinidad*.

The Court of Appeals said (App. infra, pp 21.)

> "In 1955 F.D.M. incorporated as a nonprofit corporation under the laws of California. From Easter 1955 until June 1958 weekly religious services were held in F.D.M.'s building. Attendance ranged from about 40 to 50 adults and children. In addition F.D.M. sponsored swimming and skating parties for members in facilities constructed on the property of F.D.M. There can be no doubt that the services and the sponsored recreational activities were religious in nature

and had F.D.M. so restricted its activities, its exempt status would probably not be questioned."

The Court then said (App. infra, pp 22.)

"It appears that none of the profits received from the sale of these writings [religious literature, supra] inured to Dr. Parker's personal benefit, except possibly some unexplained withdrawals from F.D.M. made by Dr. Parker. However, as we observed earlier, the destination of the profit is not the sole factor in determining exempt status."

Petitioners submit that, in view of this Court's decisions in both *University* v. *People* and *Trinidad* v. *Sagrada Orden* (supra), it would appear that there is urgent need for reiteration of the accepted meaning and the proper application of the exempting provisions of the taxing act.

4. The First Amendment to the Constitution of the United States declares:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the rights of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Sixteenth Amendment grants Congress the right to "lay and collect taxes on incomes, from whatever source derived . . ."

From the beginning of the application of the provisions of the 16th Amendment, the Congress specifically excluded the incomes of nonprofit organizations, naming certain ones directly. Those named included corporations organized for religious, charitable, educational and scientific purposes, no part of the net earnings of which inured to the benefit of any private shareholder or individual.

There can be no doubt that if a religious organization is taxed on its income, its right to exist is placed in jeopardy.

As this Court said in *Trinidad* (page 581 supra):

"Evidently the exemption is made in recognition of the benefit the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. *Such activities cannot be carried on without money;* and it is common knowledge that they are largely carried on with income from properties dedicated to their pursuit. This is particular true of many charitable, scientific and educational corporations and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted." (Emphasis supplied.)

Neither the Court of Appeals or the Tax Court sought to claim that the activities of the corporate petitioner here were remote and far removed from its avowed religious purposes. Both admitted that at least *some* of the publications were directly related to its religious teachings, and neither claimed the others toward which some doubts were cast were at variance with the corporation's basic concepts.

In *Methodist Episcopal Church South* v. *Hinton*, 92 Tenn. 188, 21 SW 321, which this Court cited with approval in the *Trinidad* case, the Tennessee Supreme Court said (21 SW 321, 324):

"The purpose of this corporation are twofold, — to publish and distribute books, etc., and therefrom to to raise money to support those most worthy objects of Christian charity. We need not inquire which is the

primary and which is the secondary purpose. Both are indissolubly interwoven in the foundation of this institution, and the former is but a means of accomplishing the latter. Even if we concede that the work done could not strictly be called religious, still the proceeds therefrom are wholly devoted to the charitable purposes contemplated in the creation of the institution, and the work done cannot be considered immoral, or at variance with the religious feature of the institution."

None will deny that the power to tax carries with it the power to destroy. If an agency of the Government can levy a tax upon the income of a religious corporation under the conditions and circumstances in the instant case, the power to destroy is placed in operation, and the rights of the religious corporation under provisions of the First Amendment are abridged, if not completely repealed.

The Court of Appeals states without equivocation (App. infra, pp 17):

"We believe it is constitutionally permissible to tax the income of religious organizations. In fact there are those who contend that the failure to tax such organizations violates the 'no establishment clause' of the First Amendment."

Petitioners submit that this passing comment of the Court of Appeals opens the door for further attack upon religious organizations, and we would note here in passing that at the opening of the current session of this Court the Court declined to review the decision of the Maryland courts in the suit brought by several avowed atheists attempting to strike down as unconstitutional the property tax exemptions granted churches in that state.

In view of the concerted effort being directed toward this goal, your Petitioners submit that there is urgent need for clarification of this point by this Court.

5. The Court of Appeals affirmed the findings of the Tax Court (App. infra, pp 27) that certain "unidentified withdrawals" from the bank account of the corporate petitioner must be presumed to have inured to the benefit of the individual joint petitioner in this case, the Reverend Dr. Merle E. Parker. The amounts are set forth in the opinion of the Court (App. infra, pp 26). The total is $17,655.92, and the withdrawals were made between 1955 and 1959, both years inclusive.

No testimony of any kind was given by any witness to indicate that Dr. Parker received this money.

If the corporate petitioner is unable to identify the expenditures it could properly be held that it could not claim these amounts as expenses, but under what statute or rule of law can it be declared that an officer of the corporation received the money, in the absence of any testimony whatsoever that this is the case?

Petitioners submit that this point alone is sufficient reason for this Court to grant their petition for a Writ of Certiorari and exercise its power of supervision.

CONCLUSION

Wherefore petitioners respectfully pray that this Honorable Court grant their petition; issue its Writ of Certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit; hear, consider and determine the questions presented; reverse the decision

of the United States Court of Appeals insofar as it was adverse to your Petitioners, and grant such other and further relief as to the Court may seem just and equitable.

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APPENDIX

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 18238

Merle E. Parker, the Foundation for Divine Meditation, Incorporated, Petitioners,

v.

Commissioner of Internal Revenue, Respondent.

No. 18239

Commissioner of Internal Revenue, Petitioner,

v.

Merle E. Parker, Respondent.

On Petitions for Review of the Decision of the Tax Court of the United States.

[September 9, 1966.]

Before VAN OOSTERHOUT, BLACKMUN and GIBSON, Circuit Judges.

GIBSON, Circuit Judge.

This case is before us on a joint petition to review a decision of the Tax Court. T. C. Memo. 1965-77. The corporate petitioner is an organization known as the Foundation for Divine Meditation (F.D.M.) and the in-

dividual petitioner is the Reverend Dr. Merle E. Parker, the founder, director, and prime functionary of F.D.M.

In 1954 F.D.M. filed an application for exemption from taxation under § 101 (6)[1] of the Internal Revenue Code of 1939. The exemption was denied by the Commissioner in a letter dated November 16, 1955 and this ruling was reaffirmed in a letter dated June 30, 1958. F.D.M. was advised of the necessity to file income tax returns and pay the appropriate amount of tax. Nonetheless, from the year 1954 through 1959 F.D.M. filed no return and paid no tax. The Commissioner determined that a deficiency plus statutory penalties were due. The Tax Court upheld the assessment of the Commissioner.

The first issue for determination is whether the Tax Court was justified in ruling that corporate petitioner, F.D.M., was not entitled to a tax exemption as a religious organization under § 501 of the Internal Revenue Code of 1954. (26 U.S.C. 1958 ed. § 501)[2]

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[1] § 101, 1939 Code provides:

"§ 101 Exemptions from tax on corporations.

"Except as provided in paragraph (12) (B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—

"(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

[2] § 501 of 1954 Code in its pertinent part provides:

"(a) Exemption from taxation.—An organization described in subsection (c) or (d) or section 401 (a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.

"(c) List of exempt organizations.—The following organizations are referred to in subsection (a):

"(3) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to

Petitioners maintain that the ruling of the Tax Court holding that F.D.M. was not entitled to an exemption was erroneous. A reading of petitioners' thorough brief indicates that petitioners' central allegations of error are: (1) The authority vested in the Commissioner to determine if an organization is entitled to an exemption from taxation is a "prior restraint" on the free exercise of their religion and violates their rights under the First Amendment to the Constitution, citing *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940). (2) Applying the case of *Trinidad* v. *Sagrada Orden de Predicadores,* 263 U.S. 578 (1924) petitioners feel that the only test to determine whether an organization is entitled to an exemption under § 501 as a religious organization is the ultimate destination of its income. This test, petitioners argue, was not applied by the Tax Court.

Dealing first with petitioners' Constitutional objections, we do not believe the free exercise of their religion as guaranteed by the First Amendment[*] has been infringed upon by the method of taxation authorized by the 1954 Code. We believe it is constitutionally permissible to tax the income of religious organizations. *Watchtower Bible & Tract Soc., Inc.* v. *Los Angeles County,* 30 Cal. 2d 426, 182 P.2d 178 (1947), cert. denied 332 U.S. 811; *Mordecai F. Ham Evangelistic Association* v. *Matthews,* 300 Ky. 402, 189 S.W.2d 524 (1954); Annot. 168 A.L.R. 1222 and cases cited therein; 51 Am.Jur., Taxation, § 610.

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children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office."

[*] The First Amendment provides in part:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *"

In fact there are those who contend that the failure to tax such organization violates the "no establishment clause" of the First Amendment. Since the government may constitutionally tax the income of religious organizations, it follows that the government may decide not to exercise this power and grant reasonable exemptions to qualifying organizations,[4] while continuing to tax those who fail to meet these qualifications. The receiving of an exemption is thus a matter of legislative grace and not a constitutional right. As long as exemptions are denied by the Commissioner on a non-discriminatory basis using specific and reasonable guidelines and without inquiry into the merits of the particular religious doctrines, the withholding of religious exemptions is permissible under the Constitution. The guideline set out in § 501 are certainly reasonable. Petitioners have demonstrated no illegal discrimination in the refusal to grant the exemption, nor have they shown that the refusal was in any way based upon a judgment of the religious tenets espoused by the petitioners. The only judgment made by the Commissioner was that F.D.M. had a substantial non-religious purpose, which judgment, as we shall see later, was entirely justified.

Petitioners rely primarily upon *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940), which reliance, we feel is misplaced. In *Cantwell* the Court declared that a state could not require a license in order to solicit support for religious doctrines. No such license is being demanded herein. Petitioners are free to espouse their religious doctrines, to publish and to speak. They are free to solicit support for their cause in any way they deem necessary. However, if they desire the special privilege of tax immunity

[4] We are expressing no opinion as to whether the grant of an exemption violates the "no establishment clause" of the First Amendment.

they are expected to follow the reasonable standards enacted by Congress and devote themselves exclusively to the pursuit of religious purposes. If they fail to qualify for this exemption they are still free to practice their religion, solicit funds, and engage in any commercial activities they deem expedient. They simply must pay the tax on their income the same as other individuals and corporations. The religion has not been deprived of its existence by the failure to secure a governmental license.

As their second allegation petitioners erroneously conclude that the only test for exemption under § 501 is the ultimate goal or use of the income. The statute clearly recognizes three requirements for exemption, not just one: (1) The organization must be "organized and operated exclusively for religious * * * purposes." (2) "No part of the net earnings [may] inure to the benefit of any private shareholder or individual." (3) "[N]o substantial part of the activities * * * [may be in] attempting to influence legislation * * *". The taxing authorities have clearly recognized and demanded as prerequisites for exemption a demonstration of all three of these elements. *Saint Germain Foundation* v. *Commissioner*, 26 T.C. 648 (1956).

Trinidad v. *Sagrada Orden de Predicadores*, 263 U.S. 578 (1924), stated only that receiving income from "limited trading" which was purely incidental to the pursuit of its religious purposes would not deprive a religious organization of its tax exemption as long as the proceeds were used for a religious purpose. So, as recognized in *Consumers-Farmers Milk Cooperative* v. *Commissioner*, 186 F.2d 68 (2 Cir. 1950), cert. denied 341 U.S. 931, not only must the ultimate purpose be religious, any profit

must be incidental to this ultimate purpose, and devoted exclusively to that purpose. The *Trinidad* case thus did not destroy the three statutory requirements for exemption. The primary and basic requirement is still that the organization must be organized and operated "exclusively" for religious purposes. Only after this primary requirement has been met we concern ourselves with the destination of any income or the organization's political activities. Appeal of *Unity School of Christianity*, 4 B.T.A. 61 (1926).

Of course, it is well established that the law does not demand a strict application of the word "exclusive" as used in the statute. "Exclusive" dedication to religious purposes is not required where non-qualifying activity is not substantial in nature. *Better Business Bureau* v. *Commissioner*, 326 U.S. 279. As we stated in *Stevens Bros. Foundation Inc.* v. *Commissioner*, 324 F.2d 633, 638 (8 Cir. 1963):

> "[I]n order for Foundation to occupy exempt status, it must be devoted to charitable purposes exclusively, and if there is present in its operations a single non-charitable purpose substantial in nature, though it may have other truly and important charitable purposes, it is not entitled to be exempt."

A review of the evidence in this case clearly supports the finding of the Tax Court that F.D.M. had a non-exempt purpose that was substantial in nature, and, therefore, under the law, was not entitled to tax exemption.

In 1948 Parker became interested in occult philosophy and religion. In 1949 he, along with other individuals whom Dr. Parker preferred to keep anonymous, founded F.D.M. as an unincorporated association with the stated purpose of advancing their ideas on religion and philoso-

phy. Parker was installed as National Director for life. Between the years 1948 and 1953 Dr. Parker received training from Riverside College in California and from the College of Universal Truth in Chicago, Illinois. In 1953 he was awarded a doctorate in metaphysical psychology and divinity from the College of Universal Truth. In 1954, at the cost of $75,000 - $80,000, a building was erected in Valley Center, California, which housed the offices of F.D.M. as well as a small meeting hall designed for religious services. In 1955 F.D.M. incorporated as a nonprofit corporation under the laws of California. From Easter 1955 until June 1958 weekly religious services were held in F.D.M.'s building. Attendance ranged from about 40 to 50 adults and children. In addition F.D.M. sponsored swimming and skating parties for members in facilities constructed on the property of F.D.M. There can be no doubt that the services and the sponsored recreational activities were religious in nature and had F.D.M. so restricted its activities, its exempt status would probably not be questioned.

Prior to the founding of F.D.M. and throughout the period in question, however, Dr. Parker authored innumerable articles, tracts, monographs, and courses in self-attainment. The results of Dr. Parker's endeavors were not merely made available to the active followers of Dr. Parker and F.D.M. Purchases of these materials were actively solicited by Dr. Parker through the offices of F.D.M. Commercial mailing lists were rented or purchased by F.D.M. with each list containing thousands of names. As a general rule, F.D.M. mailed a general description of the writing offered with a broad pronouncement of its worth and an order form stating that though the publication was not for sale, it could be acquired only by making a certain minimum contribution which

varied with the work being offered. The amount of the donation required was undoubtedly calculated to give F.D.M. profit on the sale. On occasion the writings of Dr. Parker were advertised over powerful Mexican radio stations, and via a newspaper published by F.D.M. known as the National Christian Crusader.

Dr. Parker received a small salary of $1,200 a year plus a residence as compensation for his services as National Director of F.D.M. It appears that none of the profits received from the sale of these writings inured to Dr. Parker's personal benefit, except possibly some unexplained withdrawals from F.D.M. made by Parker. However, as we observed earlier, the destination of the profit is not the sole factor in determining exempt status. We must look primarily to the organization's purposes. From the facts before us it appears that a very substantial purpose of F.D.M. was the publication and commercial exploitation of the writings of Dr. Parker.

Dr. Parker's writings which were published and sold by F.D.M. seem to divide themselves into three general categories. The first of these are courses in self-attainment. A partial list of these courses include the following titles: "Power of the Ages", "Blueprint of Life", "The Sacred Laws Behind Miracles", "Dynamic Speed Hypnosis", "Psychometaphysics", "Sacred Magic of the Ancients", "Cosmic Dynamics", "Miracle Methods of the Masters", "Wisdom of the Ancients". These courses generally pertained to metaphysics, philosophy, faith healing, physician and psychological development and dietary practices.

A second category of F.D.M.'s publications were projects promising the subscribing customer financial reward. Though we express no opinion as to what constitutes a

religious practice, these subjects appear to us to have little, if any, visible relationship to F.D.M.'s religious activities. One project was the Santa Ysabel Ming Tree Society. Individuals were induced to join the society. Upon the payment of the required "dues" they would be sent ming tree seeds with instructions on their use. Prospective customers of the ming tree seeds were promised the ability to grow $1,000 worth of these trees on a single window sill. A course in "Suggestive Passivity Induction" was offered and sold under the promises that the practitioner of this art could earn up to $10 an hour. F.D.M. under the tutelage of Dr. Parker initiated a "Ten Thousand Dollar Plan", the subject matter of which is not disclosed. The plan was offered to those who donated $10 or more and promised to donate 10 per cent of all the profit they made by the use of the plan. "The Ten Thousand Dollar Plan" was later replaced by "The $25,000 Pyramid Plan" which instructed the purchaser on how to raise earthworms for profit. A ten-lesson plan entitled "Secrets of Wealth, Power, and Success" was also promoted. It cost the recipient $23.30 and promised earnings of $1,000 within six months.

A third activity of F.D.M. concerned the conducting of various crusades. The Gospel Treasure Hunt was a fund raising campaign and was conducted in the form of a contest. Each contestant was required to "donate" an entry fee of two dollars and thus become eligible for "big cash awards". All entries were required to be on official entry blanks which were sold by F.D.M. for 75 cents a dozen. F.D.M. also conducted a "Christian Healing Crusade" which requested donations for prayers. On the prayer request form was an announcement of the availability, for a "donation" of $2.50 or more, of the tract, "Instant Healing Now". "The Tobacco Crusade" also

received a good measure of F.D.M.'s attention. Materials for this campaign were written by Parker and were offered to subscribers with accompanying price quotations by lot groups. The materials were entitled, "The Cigarette and You", "The Cigarette as the Physician Sees It", and "Death Wrapped in Cellophane".

F.D.M. also promoted and sold miscellaneous other writings of Parker. One was the results of "A Secret Research Project" concerning "a startling experiment with the white rat". Another was a tract entitled "Was Roosevelt Killed by the Ancient Death Prayer?" F.D.M. also published and circulated for profit a newspaper entitled "National Christian Crusader". A large part of each issue was devoted to advertising the above-mentioned monographs, courses, and contests sponsored by F.D.M.

Dr. Parker, himself, indicated the nature of his position as the head of F.D.M. Two separate "help wanted" advertisements inserted in a general circulation newspaper indicated that, "My business is in the field of Direct Mail Advertising and Promotion." In a letter to the Better Business Bureau, Parker wrote, "I am a mail order publisher and in business to stay." In 1952 Dr. Parker's income tax return indicated that his principal business activities were "selling books and lecture courses by mail."

An observation of gross income figures of F.D.M. indicates that from 1954 through 1959 the gross income of the organization ranged from an annual low of approximately $29,000 to an annual high of $207,435. In 1957 a sworn statement of net worth indicated that F.D.M. had a surplus of nearly $290,000. This high annual income and large surplus tends to indicate the commercial rather

than the religious nature of the foundation. *Scripture Press Foundation* v. *United States*, 285 F.2d 800 (Ct. Cl. 1961).

Whether or not an organization has a substantial non-exempt purpose is, of course, a question of fact to be determined by the Tax Court. As a question of fact, the determination will not be disturbed by this Court unless the finding was clearly erroneous. 26 U.S.C. § 7482; *Omaha Nat. Bank* v. *Commissioner*, 183 F.2d 899 (8 Cir. 1950); *Hammerstein* v. *Kelley*, 349 F.2d 928 (8 Cir. 1965); *Stevens Bros. Foundation, Inc.* v. *Commissioner*, supra. The above outline of the evidence clearly supports the finding that F.D.M. was pursuing a substantial non-exempt purpose. Consequently the ruling of the Tax Court on this issue is affirmed. F.D.M. is not entitled to a tax exemption under § 501.

We are not saying herein that religious organizations may not maintain their tax exempt status if they conduct healing crusades, take stands for or against various moral issues, publish newsletters, or offer their literature for sale. The non-religious purpose of this particular organization was evidenced by the extent and scope of the profit-making circulation, the methods of promotion, the general non-religious subject matter of some of the publications, the large annual profit, the substantial accumulated earnings, and the statements made by Dr. Parker. When all of this is viewed in relationship to the organization's exempt activities, the substantial nature of the non-religious purpose is established. We mention the healing and tobacco crusades, not because they are normally to be considered non-exempt activities, but primarily because, as used herein, they appear to be merely vehicles for the promotion of F.D.M.'s commercial publishing activities.

Dr. Parker expresses a personal fear that "dark powers" are attempting to destroy his foundation and his religious practices. The courts of this nation have always been sympathetic to minority causes and have been quick to afford them every protection available under the Constitution. However, it appears to us that the Commissioner has merely made an objective evaluation of F.D.M.'s operation and from the facts before us we do not believe the Commissioner employed any tactics in assessing this tax that offend constitutional guarantees.

We now turn our attention to the assessment of the individual petitioner, Dr. Parker. His assessment included four items. (1) Unaccounted-for and unexplained withdrawals from the acount of F.D.M. (2) Checks made payable to Dr. Parker drawn on the account of F.D.M. (3) Penalties for failure to file returns for the years 1956 and 1957. (4) Legal expenses paid by F.D.M. in defending a criminal action brought against Dr. Parker and in prosecuting a civil slander action.

Dr. Parker was the founder of F.D.M. He had control of its day-to-day activities. He had complete control of its finances with authority to draw checks on its account. The financial records of F.D.M., to say the least, were incomplete; and it appears that Dr. Parker's personal funds were to a degree commingled with the funds of F.D.M. The other directors of F.D.M. met only at infrequent intervals and, in fact, exercised little, if any, control over the activities of the foundation. In examining the records of F.D.M. for the years 1955-1959 internal revenue agents were unable to classify numerous withdrawals in the following amounts for the years in question $2,210.10, negligible, $1,300.27, $5,197.21, and $8,948 34 respectively. These unidentified withdrawals were credited

to the income of Dr. Parker. The Tax Court sustained this action, and we affirm.

Due to the extremely close relationship between Dr. Parker and the day-to-day financial activities of F.D.M. and due to Dr. Parker's complete and unfettered control over F.D.M., he has the burden of explaining unidentified withdrawals from the E.D.M. account. *Reinecke* v. *Spalding,* 280 U.S. 227 (1930); *Arc Realty Company* v. *Commissioner,* 295 F.2d 98 (8 Cir. 1961). If he is unable to do so the Commissioner may validly assume that the withdrawals were income to Dr. Parker. No evidence of any kind was produced explaining the withdrawals or indicating that Dr. Parker did not receive the benefit therefrom. Therefore, the assessment of these amounts was proper. *Marcella* v. *Commissioner,* 222 F.2d 878 (8 Cir. 1955).

On a very similar point, two checks, one in the amount of $1,000 and the other for $500, were drawn on the F.D.M. account, signed by Parker and made payable to Parker. He contends that these two checks represent the repayment of a loan made to F.D.M. Dr. Parker has presented no accounting entry tending to prove the existence of a debt. He has introduced no contemporary memorandum of a loan or the indebtedness. He has presented no testimony, other than his own, that such a loan was made. Under the circumstances we believe that the Tax Court was not required to accept the unsupported word of the petitioner. *Marcella* v. *Commissioner,* supra; *Elzig* v. *Gudwangen,* 91 F.2d 434 (8 Cir. 1937). Therefore, these payments to Parker may be considered as income to him. Any overtaxation of the petitioner is due to his failure to keep adequate records and accounts. For this he has none to blame but himself. If the law were other-

wise, taxes could be evaded simply by failing to keep adequate records.

The Commissioner assessed a 25 per cent penalty on the tax due for the years 1956 and 1957 under authority of § 6651 (a) of the Internal Revenue Code of 1954, which provides for the assessment of such penalty for the failure to file a timely return.

It appears that for the year 1956 Parker mailed a piece of plain paper to the District Director reporting no tax payable. That paper along with a regular Form 1040 were returned with instructions that the 1040 be completed and returned. A Form 1040 was never filed. Parker asserts that he never received the instructions to the effect that the return on the plain paper was insufficient, and further asserts that the submission of a plain piece of paper showing no tax due should exempt him from the penalty provision.

Taxpayers are required to file timely returns on forms established by the Commissioner. If the taxpayer fails to submit his return on the form prescribed he may be subjected to the penalty provided. Of course, at his option, the Commissioner may accept a substituted provisional form under § 1.6011.1 (b) of the Treasury Regulations on Income Tax. This, however, does not exempt the taxpayer from later filing a return on a proper form. The Commissioner is certainly not required to accept any facsimile the taxpayer sees fit to submit. If the Commissioner were obligated to do so, the business of tax collecting would result in insurmountable confusion. *Commissioner* v. *Lane-Wells Co.*, 321 U.S. 219 (1944). It is our opinion, that even if a taxpayer submits a return, but it is not on the printed form provided, under the authority of Regulation § 1.6011.1 and § 6651(a) I.R.C.

of 1954 the Commissioner may assess the statutory penalty, "unless it is shown that such a failure is due to reasonable cause and not wilful neglect." This is especially true when the taxpayer fails to submit at a later date a supplemental return on the required form.

In this case Dr. Parker presented no reason for filing his 1956 return on a plain piece of paper. Dr. Parker is an intelligent and educated person with considerable experience in the business world. He had properly filed many returns in the past. Furthermore, he gave no adequate reason for not later filing the correct return when notified by the Commissioner, other than he doesn't remember receiving any such instructions. Under the circumstances Dr. Parker has not shown reasonable cause for his failure to file the proper return. The assessment of a penalty for that year was correct.

As to the year 1957 Dr. Parker testified that he thought he had filed a return. However, a search of the Internal Revenue office turned up no return for Dr. Parker for this year. Dr. Parker presented no copy of a return or presented any evidence indicating that a 1957 return was filed. Clearly, a very small percentage of returns actually mailed are lost or misplaced by the Commissioner. We feel that this percentage is so small that we could justifiably infer from the fact that no return was found by the Commissioner that none was actually mailed. Absent any positive evidence to the contrary, this inference supports the finding of the Tax Court. The penalty assessment for 1957 was also proper.

In 1956 a criminal action was instituted against Dr. Parker for contributing to the delinquency of a minor. After a jury trial, Parker was found not guilty. F.D.M. bore the expense of defending this litigation by drawing

checks in the amount of $1,200 in 1956, $2,350 in 1957 and $600 in 1958. Subsequent to the criminal action, Dr. Parker instituted a civil slander action against a medical doctor and the mother of the minor to whose delinquency Parker was alleged to have contributed. F.D.M. also bore the expense of this action. It drew checks in the amount of $500 in 1956, $48 in 1957, $1,000 in 1958. The Commissioner determined that these amounts were paid on the behalf of Parker and thus taxable to him in the year paid. The Tax Court affirmed this finding. After a thorough consideration we are of the opinion that the Tax Court should be reversed on this matter.

It is our understanding that the incident giving rise to the criminal charge allegedly took place on the property of F.D.M. and was allegedly committed in the performance of Dr. Parker's duties as director of F.D.M. Had Dr. Parker paid these costs himself they probably would have been deductible by him as "ordinary and necessary" expenses in conducting a trade or business. *Commissioner* v. *Tellier*, 383 U.S. 687 (1966) affirming 342 F.2d 690 (2 Cir. 1965). Since these expenses were paid by F.D.M. on behalf of Parker and itself, we do not understand the Commissioner's zeal in attempting to tax these expenditures as income to Parker.

Of prime importance, however, due to the almost complete identity of F.D.M. with Dr. Parker, we believe that the defense of the suit against Dr. Parker was in the direct interest of F.D.M. Had Dr. Parker been found guilty of the charge, this would have assured the collapse of the Foundation. Not only would the Foundation have been deprived of Dr. Parker's services, but the moral condemnation involved in the charge would have attached to the organization with which he was so intimately associated.

We cannot separate the acts of Dr. Parker while acting on behalf of F.D.M. from the acts of F.D.M. Likewise, we cannot accept that the expense of defending criminal charges arising out of his activities as the leader of F.D.M. are uniquely personal to him even though F.D.M. is not criminally liable for his acts. Unlike large commercial operations whose business reputation is not necessarily damaged when one of the officers is faced with community censorship, (See *Pantages Theater Co.* v. *Welch*, 71 F.2d 68 (9 Cir. 1934)), a small direct advertising and soliciting organization with accompanying religious activities, completely dominated by the personality of one man, depends for its continued existence on the community acceptability of this man's moral standing. If the man suffers serious moral condemnation, the organization suffers the condemnation along with him. To an organization whose existence depends upon the attraction of loyal followers and direct mail customers, this condemnation is a sentence of death. A small religiously oriented corporation cannot expect to live a long life when the trust and respect of the followers for the founder and leader of the movement have been shattered by a criminal conviction on a morals charge.

In the same light the bringing of the slander action sought to further clear the names of Dr. Parker and F.D.M. from the cloud that remained even after the verdict of not guilty. The organization had no cause of action, and only Parker could bring the charge; but even so, a successful conclusion of the slander action would inure to the direct and substantial benefit of F.D.M.

It is, therefore, our opinion that these legal expenses not only resulted in a direct benefit to the organization, they were expenditures calculated to secure the very survival of the organization itself. Consequently, all of

the expenditures incurred in defending the criminal action against Dr. Parker and in prosecuting the slander action in the name of Dr. Parker can be said to have been made for the benefit of the Foundation in an attempt to preserve its community reputation, its income-producing ability, and consequently its survival. As a consequence these expenditures are not income to Dr. Parker even though he, too, received a benefit therefrom, *Robert S. Howard* v. *Commissioner*, 32 T.C. 1284 (1959). Since the defense of the criminal action and the cost of prosecuting the slander action are ordinary and necessary business expenses of F.D.M., they are deductible expenses of F.D.M. It would follow from this that such deductible expenses could not properly be considered as income to Parker.

Therefore, in all respects, save the determination of the legal expenses, the ruling of the Tax Court is affirmed. As to the tax liability of Dr. Parker and F.D.M. the decision of the Tax Court is reversed only as to the issue of the legal fees and expenses paid by F.D.M. and taxed against Dr. Parker. The Commissioner filed a cross-petition "for protective purposes only in the event this Court decides that those items of income were not taxable to F.D.M." Since, we have decided that income to F.D.M. was taxable we need not consider the issues raised in the cross-petition. The case is remanded for recalculation of the tax and penalty due in accordance with the views expressed in this opinion.

Affirmed in part, reversed in part, remanded.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

T. C. Memo. 1965-77

TAX COURT OF THE UNITED STATES

THE FOUNDATION FOR DIVINE MEDITATION, INCORPORATED, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

MERLE E. PARKER, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

Docket Nos. 2601-62, 2600-62. Filed April 5, 1965.

FDM not entitled to exemption under sec. 501(c)(3) because it was not organized and operated exclusively for religious purposes. Its publication and distribution of various materials constituted a substantial nonexempt activity.

Parker realized taxable income from certain items, including litigation expenses paid by FDM on his behalf.

Both FDM and Parker are liable for additions to tax under sec. 6651(a), I.R.C. 1954, for failure to file returns, and FDM is liable for additions to tax for underpayment of taxes under sec. 6653(a), I.R.C. 1954.

Merle E. Parker (an officer) for the petitioners.

Douglas W. Argue for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION.

TRAIN, *Judge*: Respondent determined deficiencies in income taxes and additions to tax as follows:

	Year	Deficiency	Section 6651(a)[1]	Section 6653(a)
The Foundation for Divine Meditation, Incorporated, Docket No. 2601-62	1954	$70,092.60	$17,523.15	$3,504.63
	1955	23,388.64	5,847.16	1,169.43
	1956	14,128.14	3,532.04	706.41
	1957	4,873.82	1,218.45	243.69
	1958	9,579.38	2,394.85	478.97
	1959	18,273.92	4,568.48	913.70
Merle E. Parker Docket No. 2600-62	1955	30,686.30		
	1956	17,155.18	4,288.80	
	1957	4,563.64	1,140.91	
	1958	11,607.26		
	1959	23,513.73		

Some concessions have been made by respondent so that decisions will be entered under Rule 50 if any issues are decided adversely to the petitioners.

The issues for decision are:

(1) Whether, during the years in issue, the petitioner The Foundation for Divine Meditation, Incorporated (hereinafter sometimes referred to as FDM), was exempt from taxation under section 501(c)(3) as a religious or educational organization;

(2) If issue one is answered in the affirmative, whether any of FDM's income is subject to the unrelated business income tax imposed by section 511;

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[1] All statutory references are to the Internal Revenue Code of 1954 unless otherwise indicated.

(3) Whether the petitioner Merle E. Parker (hereinafter sometimes referred to as Parker) realized taxable income from various payments made by FDM;

(4) Whether FDM is liable for additions to tax imposed by sections 6651(a) and 6653(a) for failure to file returns in, and underpayment of income taxes for, 1954 through 1959; and

(5) Whether Parker is liable for additions to tax imposed by section 6651(a) for failure to file returns in 1956 and 1957.

FINDINGS OF FACT.

Some of the facts have been stipulated and the stipulation of facts and exhibits appended thereto are incorporated herein by this reference.

Petitioner Parker, an individual, presently resides in Thornfield, Missouri. During the years in issue he resided at Valley Center, California, and filed Federal income tax returns with the district director of internal revenue at Los Angeles, California, for calendar years 1955, 1958, and 1959. In July 1945, Parker purchased a tract of property in Riverside, California, and established a retail nursery business which failed in 1947. In August 1947, Parker enrolled in Riverside College, Riverside, California, which he attended for one year. Between 1948 and 1953 he received training, primarily by correspondence courses, from the College of Universal Truth in Chicago, Illinois. After completion of these courses in 1953, this school awarded him doctorates in metaphysical psychology and in divinity. During the latter part of 1948, Parker and several other persons interested in metaphysical and occult doctrines held discussions for the purpose of forming an organization which later came to be known as "The International Fraternal Order of the Foundation

for Divine Meditation." At trial Parker insisted that these persons remain anonymous.

Petitioner FDM is a nonprofit corporation organized in February 1955 under the laws of the State of California, located in Valley Center, California. It is a continuation of an unincorporated association organized by Parker in October 1949. On or about October 24, 1949, Parker caused to be filed with the office of the secretary of state of California a registration of the fraternal name "The Foundation for Divine Meditation." During the years 1954 through 1959 FDM did not file any Federal income tax returns.

The purposes for which FDM was organized are stated in the preamble to the bylaws dated October 24, 1949, as follows:

> THEREFORE, hereby propose to establish, and as a result of such proposal, do hereby establish a Sacred Fraternal Order for the purpose of teaching, practicing, and applying the True Sacred Teachings and Commands of Jesus Christ, together with any and all other Sacred Teachings of Ancient Origin which may assist in the understanding of the Eternal Laws of Almighty God, and the name of this Sacred Fraternal Order hereby established is the INTERNATIONAL FRATERNAL ORDER OF THE FOUNDATION FOR DIVINE MEDITATION, which official abbreviation of such name is I. F. O. F. F. D. M. For the purpose of public identification this Sacred Fraternal Order shall be known simply as THE FOUNDATION FOR DIVINE MEDITATION, and we hereby authorize, but do not require that this Sacred Fraternal Order be incorporated at some future

> date, and do empower the presiding officer and secretary of this Order to incorporate same, at such time as they shall deem it wise and expedient to do so.

The bylaws, rules and discipline provided for the offices of supreme grand counselor and national director, supreme grand secretary and national secretary, and supreme grand treasurer and national treasurer, which positions were to be held by Parker, Mary Lewis Anderson of Roanoke, Virginia, and Iyonne Edgar of Phoenix, Arizona, respectively. Other provisions of the bylaws provided for the establishment of schools, academies, churches, or branches throughout the United States, or in any country of the world, and the establishment of local study groups, councils and grand councils. The bylaws also provided for the creation of subordinate offices to be held by group leaders, counselors, and grand counselors, the duties of each being described therein. As of the time of trial, none of the subordinate divisions, schools, academies, churches, or branches thereof had been established. Neither was there any indication of the appointment of any of the subordinate officers authorized under the bylaws. The final article of the bylaws contained miscellaneous provisions and provided, in part, as follows:

> The income of this Order shall be from donations, tuition fees, and gifts from Members and others who choose to assist its work, goals, and growth.

In August 1950, a four-page document drafted by Parker, entitled "CONSTITUTION," was filed with the County Recorder, Riverside County, California. Article II of this document provided that:

> The primary purpose of THE FOUNDATION FOR DIVINE MEDITATION shall be to teach

the application of certain spiritual, psychological, physical, and metaphysical principles to the problems of daily life. In furtherance of its goal it shall, from time to time, publish books, booklets, courses, and reports for the benefit of its membership.

Article VIII, part 6, provided that:

The Members of this organization shall be of two classes with voting privileges as follows:

a. The Directorate, which shall include the Board of Directors and all Members who have completed prescribed studies necessary to receive appointments to the office of Counselor, or an office superior to that rank. Each member of the Directorate shall have one vote in matters pertaining to the organization.

b. General Membership, which shall include all degrees of the organization below that of Counselor. Members in this class shall not have the privilege of voting in matters pertaining to the organization.

Article VIII, part 9, provided that:

No provision of these Articles shall be construed as prohibiting any officer of this Organization from offering for sale to the public under his own name, or under the name of any organization or publishing firm other than THE FOUNDATION FOR DIVINE MEDITATION, any writing of any nature of which he is the author or copyright owner, except that the specific writings of Merle E. Parker comprising the basic study course of this Fraternal Order, and entitled "Power of the Ages," "Blueprint of Life," and "The Living Clay" respectively,

shall not be sold to any person whomsoever without unanimous consent of all members of the Board of Directors of this Organization.

Article VIII, part 10, provided that:

The primary source of income of THE FOUNDATION FOR DIVINE MEDITATION shall be from gifts, contributions, and bequests from members or others who wish to assist its aims and goals.

The articles of incorporation of FDM were filed with the secretary of state of California in February 1955. Article Two (b) authorized execution of contracts, ownership of property and carrying on business activities, in broad terms. An amendment filed on March 5, 1956, provided that the property of FDM was irrevocably dedicated to religious and charitable purposes.

Parker, Mary Lewis Anderson and Iyonne Edgar were named as directors and officers. Since 1949, directors' meetings have been held on an average of less than once a year. These meetings were all held at the residence of the national secretary in Roanoke, Virginia. The meetings were attended only by Parker and the national secretary who in each instance acted as a quorum. The national treasurer was never in attendance. At the time of trial Parker had "lost track" of her.

Parker has held the position of national director of FDM since its formation in 1949. The bylaws and constitution permit him to hold this position until death or voluntary resignation. As national director, Parker had complete control over the day-to-day operations of FDM. He made all decisions on the manner of soliciting funds and the expenditures of money. He approved both the national secretary and the national treasurer, who were

selected from those enrolled in study courses prior to the formal organization of FDM in October 1949. On income tax returns filed beginning in 1949, Parker variously described his occupation as "Student-Writer" (1949 return), "Psychological Counselor and Writer" (1951 return), "Author-Publisher" (1952 return), "Minister-Counselor" (1953, 1954, and 1955 returns), and "Director, Religious Corporation" (1958 return).

Since 1949 the principal activity engaged in by Parker and FDM has been the publication and distribution of courses, booklets, monographs, reports, pamphlets, and newspapers written, compiled, or edited by Parker. Every year funds were solicited and publications mailed by Parker from Valley Center under the names of "FDM", "The National Institute of Christian Healing", "The Aquarius School of Masters", "The Academy of Self Attainment", "S. P. I. Foundation", "The Psycho-Metaphysical Research Society", and "The Santa Ysabel Ming Tree Society," as well as under Parker's name as an individual. Parker considered that all of these mailings and solicitations were done on behalf of FDM, and consequently FDM is sometimes hereinafter referred to in lieu of the name of the affiliated organization.

FDM's principal source of income was from amounts received in response to circulars and announcements. Some of the solicitation materials were mailed only to those persons who were regarded as "members" of FDM. Many of the materials were mailed to all persons listed on mailing lists rented or purchased by FDM. No record was kept of the amount received in any year from the distribution of specific publications.

The "membership" of FDM consisted of those persons who signed and returned the solicitation forms used in announcing publications and obtaining funds for the

FDM operations. FDM kept no formal membership roll. The only place where names of members were kept was on metal addressograph plates used in addressing correspondence. By using mailing lists to obtain membership, FDM had 30,000 members by 1953 and 60,000 by the end of 1954. The largest membership during the years at issue was attained in 1955 when FDM had 65,000 members. The membership was scattered throughout the United States and in foreign countries.

On May 3, 1954, FDM failed an exemption application claiming exemption from Federal income tax under section 101(6) of the Internal Revenue Code of 1939. By letter dated November 16, 1955, FDM was advised by the Internal Revenue Service that its application was denied. This ruling was reaffirmed in a letter dated June 30, 1958.

From 1948 through the time of trial, Parker, FDM, and its affiliated organizations distributed various booklets, pamphlets and monographs. Some of these materials constituted courses of instruction in the doctrines of FDM. Most, if not all, of the materials were written by Parker, some when he was a student at Riverside College in 1948. Many are copyrighted under his name. Some of the principal courses are entitled "Power of the Ages," "Blueprint of Life," "Suggestive Passivity Induction," "The Sacred Laws Behind Miracles," "Dynamic Speed Hypnosis," "Cosmic Dynamics," "Sacred Magic of the Ancients," "Miracle Methods of the Masters," and "Sacred Wisdom of the Ancients." The subject matter of these courses relates generally to metaphysics, occult philosophy, faith healing, physical and psychological development, and dietary practices.

In connection with the above materials, Parker and FDM sent out various "announcements" to persons who

were on mailing lists (including one list containing the names of approximately 750,000 members of a group, Psychiana, whose founder had died.) These announcements contained coupons usually denominated "donation forms" which were to be used in order to receive materials. Though the announcements generally represented that the lessons were not for sale, great emphasis was placed on the need for "donations".* In connection with a series of monographs entitled "Forbidden Secrets of the Masters" offered by the Aquarius School of the Masters, distribution policy was stated as follows:

> All writings offered by this School are sent freely to those who assist the School's work with reasonably generous donations, as an indication of their sincere desire to spread the Ancient Wisdom. None are "FOR SALE". Whenever a MINIMUM DONATION is specified in the Bulletins, that amount or MORE must accompany any request for Study Material. We do not make any exceptions

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* The following is a typical such form:

ENROLLMENT APPLICATION AND DONATION FORM

To: Aquarius School of The Masters, Santa Ysabel, California

YES, I WANT YOUR COMPLETE COURSE OF 14 LESSONS IN COSMIC-DYNAMICS

and I am enclosing a DONATION for your 1959 Expansion Program. I understand that your course in COSMIC-DYNAMICS is reserved for those who donate $10.00 or more, and will be mailed in one large package containing ALL 14 LESSONS. I also understand it will require about 30 days to prepare my lessons after my donation is received.

I am enclosing: ( ) $25.00; ( ) $15.00; ( ) $10.00, or MORE: $_____.

under any circumstances, and we do NOT send any Courses "C. O. D."

In 1951, under the name "Santa Ysabel Ming Tree Society," Parker mailed out a four-page brochure dealing with growing ming trees for profit. Under a bold face query that "There is One Thousand Dollars Worth of Space in your Window Sill Just Going to Waste: What are You Going to Do About It?" a letter began as follows:

Dear Friend:

That empty space in your window sill will grow ONE THOUSAND DOLLARS WORTH of the fabulous little Ming Trees which have all America agape with awe and wonder!

We are sending you enough REAL TREE SEEDS to produce a thousand dollars worth of these Ming Trees at current prices, and we're asking you to PLANT THEM AT ONCE!

On the following pages you will find facts that will show you how to get great enjoyment — AND PROFIT — from your "partnership with Nature"! Yes, you will learn how to win the admiration of your friends—and how to beautify your home with a living creation of Nature—HOW TO MAKE REAL MONEY!

An application form at the end of the brochure outlined the materials which would be sent and specified an initiation fee of $3, plus monthly dues of $2. The application stated that an applicant could save $7 by remitting $18 for a full year's membership dues in advance.

In 1952, Parker wrote a lesson entitled "S.P.I. and Cosmic Communication," which was mailed in 1952 and

1953. The announcement for this lesson was headed: "From the Private Office of Dr. Merle E. Parker, Santa Ysabel, California." The following letter constituted the first page of the four-page announcement:

I am sending you a SPECIAL LESSON "S. P. I. and Cosmic Communication," and I am sure you will gain much from studying it carefully. This lesson is YOURS TO KEEP, without cost or obligation, whether you are enrolled as one of my thousands of students or not! I want you to profit by the information it contains, so that your own life and the lives of those you love can be made fuller and richer.

Perhaps you are one of the people who received a folder recently describing S. P. I. (Suggestive Passivity Induction), and giving a number of its "materialistic" uses. This folder announced the need for teachers and practitioners of this amazing method of stopping pain, as well as many undesirable conditions by a MERE VERBAL COMMAND.

A great many who received this folder wrote to me asking if they could enroll in the complete ten-week course in S. P. I. even though they wanted the information only for their own use, or for use within their own family, and not to become a teacher.

THE ANSWER IS YES!

Others wanted to know if S. P. I. was purely "materialistic" as suggested by the contents of this folder, which dealt primarily with its use to stop PAIN.

THE ANSWER IS NO!.

The enclosed SPECIAL LESSON elaborates upon these two questions, and gives some additional

information which you can use in your daily life RIGHT NOW. It provides information which can give you a more complete understanding of what S. P. I. is and what it can do for YOU and your loved ones. Study this lesson carefully.

If you are already are enrolled in the complete ten-week course in SUGGESTIVE PASSIVITY INDUCTION, this SPECIAL LESSON will answer some of the questions which may have come to your mind concerning the ADVANCED APPLICATION of the amazing Techniques you already have learned.

If you have NOT enrolled, write at once for the HANDBOOK AND PRACTICE GUIDE which describes SUGGESTIVE PASSIVITY INDUCTION, (S.P.I.), and contains a Sample Lesson and Special Technique which you can use to prove to yourself and to your friends how truly powerful the SPOKEN WORD can be!

This HANDBOOK also tells you how you can obtain the COMPLETE TEN-WEEK COURSE IN SUGGESTIVE PASSIVITY INDUCTION without cost to yourself! Two methods of "earning while you are learning" are given!

REMEMBER: You risk NOTHING when you send for the Handbook and Practice Guide, because your original deposit of only ONE DOLLAR will be refunded to you if you decide to return it in its original condition within five days after you receive it!

You have EVERYTHING to gain and NOTHING to lose, so ACT AT ONCE!

Yours, with best wishes for TRUE UNFOLDMENT.

In the body of the announcement the prospective purchaser was advised "HERE IS YOUR OPPORTUNITY TO EARN UP TO $10.00 AN HOUR!" The last page of the announcement contained the following statements:

> You risk NOTHING when you send for the "HANDBOOK AND PRACTICE GUIDE," which describes Suggestive Passivity Induction and gives a SPECIAL TECHNIQUE which you can use the very day you get the "Handbook" to demonstrate to your friends and yourself how TRULY POWERFUL the "Spoken Word" can be, when properly used and understood,
>
> BECAUSE I MAKE THIS POSITIVE MONEY-BACK GUARANTEE TO YOU:
>
> After you have used the ASTOUNDING TECHNIQUE given in your "Handbook" and have followed the detailed directions, IF YOU DO NOT GET RESULTS AS DESCRIBED THEREIN, RETURN THE "HANDBOOK" WITHIN FIVE DAYS AFTER YOU RECEIVE IT AND I WILL SEND YOUR DOLLAR BACK TO YOU! And furthermore . . .
>
> I WILL PAY ONE HUNDRED DOLLARS REWARD TO ANYONE WHO proves that the Technique described in your "Handbook" is not the very same Technique which I have used over and over again to GET RESULTS! Yes, this is the very same Technique which I have used to GET RESULTS before large audiences like the one before which I demonstrated this Technique in Riverside, California, when EVERYONE who followed the simple directions I gave them GOT RESULTS! Yes, EVERYONE in that audience got results within a

very few minutes, and YOU can too! Not only can YOU get results with this ASTOUNDING AND SIMPLE TECHNIQUE, but you also can TEACH others how to get results and get paid well for doing it, if you desire to!

WARNING; Due to the TERRIFIC POWER in Suggestive Passivity Induction (SPI), I will not knowingly send this "Handbook" to any person who intends to try to use S. P. I. for any UNETHICAL OR WRONG PURPOSE! S. P. I. is a wonderful POWER when used for GOOD! I have never seen anything that equals its POWER! YET, I have searched for many years! BUT: You must ALWAYS put it to use for a GOOD PURPOSE ONLY!

If you want to learn more about this ASTOUNDING POWER and what it may do for YOU, send ONLY ONE DOLLAR (which is refundable according to my MONEY-BACK GUARANTEE) RIGHT NOW! Yes, send your dollar AT ONCE because the "Handbooks" are going fast, and you do not want to be TOO LATE! I cannot promise to hold this offer open more than 30 days.

YOU RISK NOTHING!

YOU HAVE MY POSITIVE MONEY-BACK GUARANTEE TO PROTECT YOU! ACT NOW!

In the summer of 1954, Parker conducted a campaign called "The Tobacco Crusade." Part of the materials used in this campaign were written by Parker in 1949. The announcement for the campaign provided an order form for books entitled "The Cigarette and You" and "The Cigarette as a Physician Sees It," and a folder "Death Wrapped in Cellophane," which quoted prices for

quantities up to 1,000 copies. The campaign was also advertised over two Mexican radio stations for approximately three months at a cost of approximately $4,500.

In 1958, a circular "From the Desk of Dr. Merle E. Parker" was mailed announcing the availability of a confidential report concerning a "startling Experiment with the White Rat." The text of the announcement stated that the report was based on "A SECRET RESEARCH PROJECT . . . CAREFULLY GUARDED FOR 11 YEARS," and contained a coupon which stated:

> VERY IMPORTANT: This Confidential Report is NOT for sale! It will be sent as a GIFT to every person who responds to this "S O S" with a reasonably generous donation to help in the FIGHT FOR FREEDOM now under way!
>
> To: Dr. Merle Parker, P. O. Box 7, Santa Ysabel, California.
>
> YES! I do believe in the CONSTITUTION OF THE UNITED STATES OF AMERICA, and in the FREEDOMS WHICH IT GUARANTEES! I am enclosing a DONATION to help you carry on the CRUSADE FOR FREEDOM. A copy of your CONFIDENTIAL REPORT on your startling Experiment with the White Rat will be appreciated. I am enclosing: ( ) $20.00; ( ) $15.00; ( ) 10.00; ( ) $5.00 or ( ) $.....

Another announcement mailed under Parker's name during 1959 was a circular for two documents written by Parker entitled "Sacred Magic of the Psalms" and "Was Roosevelt Killed by the Ancient Death Prayer?" Both documents were advertised as being not for sale. However, it was explained in the circular that these documents could be obtained if one sent "a reasonably gener-

ous donation ($5.00 or more) for the 1959 Research and Expansion Program."

During 1955, FDM conducted a campaign known as the "Christian Healing Crusade." In conjunction with the campaign, announcements were sent out which included the following application form by which a contributor could obtain a copy of "INSTANT HEALING NOW":

Dear Friends of the CHRISTIAN HEALING CRUSADE:

Yes! I want to take part in the daily SACRED HOUR HEALING SERVICES! I will join you in the Healing Service Number . . . I live in the..... TIME ZONE. (Note: If you are not sure which TIME ZONE you are in, ask your Postmaster; he can tell you.)**

I am enclosing a LOVE OFFERING of $..... to help the CHRISTIAN HEALING CRUSADE.

(IMPORTANT: All donations are deductible from your income tax . . . make your check or Money Order payable to THE FOUNDATION FOR DIVINE MEDITATION, INCORPORATED).

* * * * * * *

I DESIRE SPECIAL PRAYER FOR: ( ) Healing for myself; ( ) Healing for a friend or loved one whose name is .....;
( ) Help to overcome an undesirable habit in myself.
( ) Help to overcome an undesirable habit of a loved one whose name is: .....
( ) Other help (Please describe briefly).....

Do you have a copy of "INSTANT HEALING NOW"?.....

(If you do NOT, you may obtain a copy by sending a donation of $2.00 or more; or you may obtain EXTRA COPIES at the following rates: 6 Copies for $6.00; 12 copies for $10.00; 100 copies for $55.00.

Extra copies of this SPECIAL HEALING LESSON are available at $1.50 a dozen or $10.00 a hundred.

For a short period during 1956, Parker published a weekly newspaper known as "Valley Center Crusader." The newspaper had a subscription rate, accepted advertising, and had a circulation of approximately 1,200.

In 1956, Parker also published a newspaper entitled "National Christian Crusader, Santa Ysabel, California." Parker described this newspaper as the official news publication of FDM. A large portion of each issue was devoted to advertising treatises, books, courses, and to a contest entitled "Gospel Treasure Hunt." All of these materials were available by filling out an application form and sending a stated amount of money to various organizations used by Parker at a Santa Ysabel post office box address.

The Gospel Treasure Hunt was a fund-raising campaign conducted from May 1956 to the early part of 1957. The rules of the contest required a "donation" of $2 payable in cash, check or money order. The rules also provided for multiple entries but required that each entry be accompanied by a "donation" of $2. The rules required that entries be on official entry blanks which were sold for $0.25 for four entry blanks or $0.75 a dozen. The contest was open to both members and non-members and, in addition to advertising the contest in the National Christian Crusader, separate announcements were mailed to contestants. One of these announcements contained the following application blank:

ACCEPTANCE CERTIFICATE

To: National Contest Manager, GOSPEL TREASURE HUNT, P. O. Box 7, Santa Ysabel, California.

YES, SIR! I certainly will accept the appointments as CONTEST MANAGER of my local Chapter of the GRAND NATIONAL GOSPEL TREASURE HUNT! Rush my contest material, including 50 Official Entry Blanks, official rules, and all of the instructions I need to qualify for the big CASH AWARDS.

I am enclosing my REFUNDABLE DEPOSIT of $2.00, with the understanding that it will be promptly refunded when 5 or more of my friends and neighbors mail their Entries to the GRAND NATIONAL GOSPEL TREASURE HUNT.

During 1957, under the letterhead "SUCCESS UNLIMITED" and "From The Office of Dr. Merle E. Parker" circulars were mailed announcing a publication entitled "TEN THOUSAND DOLLAR PLAN." The announcements described how to obtain the plan as follows:

You cannot "BUY" my "TEN THOUSAND DOLLAR PLAN"... because

IT IS NOT FOR SALE

I will send my "TEN THOUSAND DOLLAR PLAN" to every loyal Christian-American who sends a reasonably generous donation within the next couple of weeks, together with his promise to donate ONE-TENTH of the income he makes with the "PLAN" to carry on our World-Wide Work, including our EXPERIMENTAL FARM, and the Academy of Self Attainment. I want just TWO THOUSAND

"hand - picked" men and women who are really LOYAL CHRISTIAN-AMERICANS! I do NOT want those who are "curious", I do NOT want those who want to make some "special proposition".

There is ONE WAY... AND ONLY ONE WAY... that you can get my "TEN THOUSAND DOLLAR PLAN":...

Fill out and mail the enclosed DONATION FORM, and a reasonably generous donation ($10.00 or more) to me, personally, BEFORE November 15th. I will then PERSONALLY see that your copy of the "PLAN" goes out to you... BY FIRST CLASS MAIL... *CAREFULLY AND FULLY SEALED!*

You MUST SIGN the Donation Form. Please don't forget to do that, because if you do, there will be a delay until I can return it to you to be signed, and then you send it back again. Do it RIGHT NOW * * * PLEASE. PERSONAL CHECKS must be "cleared" by our bank, and will cause a delay in mailing your "PLAN". Wrap currency in a piece of paper. It will arrive safely.

Make Money Order payable to: Dr. Merle E. Parker.

To obtain the "TEN THOUSAND PLAN" an applicant was required to fill in a "DONATION FORM" addressed to Parker, which stated, in part:

Yes, Dr. Parker, I promise to donate ONE-TENTH of the income I make with your TEN THOUSAND DOLLAR PLAN to help you with the Christian Work you are doing, including your EXPERIMENTAL FARM, and the Academy of Self Attainment. I AM ENCLOSING A DONATION OF $_____.

(NOTE The PLAN will be sent to all who donate $10.00 or more * * *)

The "TEN THOUSAND DOLLAR PLAN" was later replaced by another publication written by Parker entitled "The $25,000 Pyramid Plan." In 1953 Parker distributed a ten-lesson plan entitled "Secrets of Wealth, Power and Success." In his announcement he stated: "I'M BETTING THE FULL PRICE OF THIS COURSE ($23.30) THAT IT WILL MAKE $1,000 FOR YOU WITHIN SIX MONTHS! IF DOESN'T, YOU OWE ME NOTHING! FAIR ENOUGH?"[3]

In 1954, the National Institute of Christian Healing offered its members "stock certificates" the proceeds from which were to be used to construct certain buildings. The State of California issued a cease and desist order which, together with the lack of response to the solicitation, caused the offering to be withdrawn.

At the end of 1952 and in the middle of 1953, Parker advertised for employees in a local newspaper. These "Help Wanted" advertisements read in part as follows:

[December 19, 1952]

WANTED TO LEASE...
an ALERT and ACTIVE MIND...

* * * * * * * *

My business is in the field of Direct Mail Advertising and Promotion. My customer list covers the Nation... and Canada. It was five times as big in 1951 as it was in 1950... and it was TEN TIMES

---

[3] "The $25,000 Pyramid Plan" dealt primarily with the financial success possible from raising earthworms. Although the announcements for the "TEN THOUSAND DOLLAR PLAN" are in evidence, its contents are not.

as big in 1952 as it was in 1951. It is still growing . . . FAST!

In choosing the young woman to train as my Executive Assistant, I shall place primary emphasis upon the three qualities mentioned above: Courage, Determination, Vision. This is the kind of position that is offered "once in a lifetime."

* * * * * * * * *

If you want a POSITION . . . not just a "job" . . . and have enough courage to ask for it, I promise you will at least get an interview. That alone can be of lifetime value to you. You will have the opportunity to get a first hand view of the same Success Methods for which several thousand men and women throughout America paid me a total of fifty thousand dollars during 1952.

I'll be waiting.

Dr. Merle E. Parker, (Ps. D)
P. O. Box 534, Escondido, Calif.

[July 31, 1953]

WANTED TO LEASE . . .
Two More Alert and Active Minds . . .

* * * * * * * * *

Eight months ago I inserted an ad similar to this in The Times-Advocate. The young woman who was chosen for the position which was open at that time is now earning fifty per cent more than any young woman of her age in Escondido, and twice as much as the average.

My organization has continued to grow rapidly since January of this year, and I now have openings for two more young women who are seeking a perma-

nent position where they can practically "write their own tickets."

All applicants will be carefully considered and those with highest qualifications will be given the opportunity to prove their ability. Applicants will begin in the mailing department of my organization, which is now second largest in the field in the United States. We are currently mailing almost a quarter million pieces of mail a month to all parts of the world.

FDM's administration building in Valley Center, California, was built in 1954 at a cost of approximately $75,000. In the meeting hall of this building Parker conducted weekly Sunday school and services for about 40 to 50 children and adults from Valley Center from Easter Sunday 1955 to the middle of June 1958. Friday night skating parties and summer swimming parties were held for members' children and guests on the FDM property during this period.

On or about April 24, 1953, the solicitor for the Post Office Department filed a complaint against Parker and FDM alleging violation of 39 U.S.C. sec. 259 and 732 for falsely and fraudulently obtaining money through the mails for the courses entitled "The Sacred Laws Behind Miracles" and "Secrets of Wealth, Power and Success." After a hearing, the complaint was sustained as to the latter course, and a fraud order was issued by the Deputy Postmaster General. This order was ultimately sustained by the Court of Appeals for the District of Columbia. *Parker* v. *Summerfield*, 265 F.2d 359 (1959), rehearing denied 265 F.2d 960 (1959). A similar proceeding instituted against Parker in March 1952 concerning his "Handbook and Practice Guide, with the complete Introductory Lesson in Suggestive Passivity Induction tech-

niques", was settled in April 1952 when Parker agreed to discontinue its printing, publication, and distribution through the mails.

As a result of numerous inquiries and complaints, the activities of Parker and the other organizations operating out of Santa Ysabel and Valley Center, California, were discussed in the newsletter issued by the Better Business Bureaus of Los Angeles and San Diego, California. In response to the articles appearing in these reports, Parker on S.P.I. Foundation letterhead stationery wrote the following letter dated March 13, 1953, to the Better Business Bureau of San Diego:

Gentlemen:

I have your rather amusing report about me which was sent to my secretary recently in response to her request for information.

It is too bad that the man who wrote it (so I am told) is now beyond the reach of mortal communications having drowned off the coast of California the other day.

At any rate, the entire article in what you call the "Reporter" is garbled, and based on half-truths. In the first place, the course mentioned in the circular which was so thoroughly misquoted is not directly connected with the fraternal organization the writer chose to try to hold up to ridicule.

In the second place I am a mail order publisher and in business to stay. Last year I spent a total of a little more than ten thousand dollars for postage to mail literature and lesson material to SATISFIED CUSTOMERS.

The Santa Ysabel Post Office was boosted to third class from fourth class shortly after I began mailing from there in 1951, so evidently the P. O. Dept. is satisfied that I am not out to try to "cheat the public" as your reports seem to insinuate. At present the Santa Ysabel P. O. is eligible to be increased in rank to Second Class, probably effective July 1, 1953.

While your various "blurbs" in no way affect my business, I think it would be well for you at least to get things straight, instead of setting yourselves up as literary and thought-critics.

It is no surprise to me that people like the man who wrote the article would not be interested in the deeper studies of the human mind and its relationship to "miracles" as they are called when they occur at religious meetings or shrines of various sorts. Few "rank materialists" are interested in these deeper things.

So send out all the reports you want to, but at least try to be honest . . . if you know how!

Yours very truly,

Dr. Merle E. Parker

P.S. The P. O. "fraud order complaint" referred to had no connection with the course ridiculed by the writer of this article and was corrected at once when brought to my attention. I have mailed 300,000 circulars since then.

P.S. #2. I also am organizer and promoter of the Santa Ysabel Ming Tree Society and the Psycho-Metaphysical Research Society (Escondido), as well as Master Publications (Riverside.) All mail-order.

In his 1952 Federal income tax return, Parker listed his occupation as "Author-Publisher," stated that his principal business activities were "Selling books and lecture-courses by mail," and "Selling General Merchandise, Retail" (in a store which he ran as a sole proprietor). His main items of expense were for printed materials, labor, postage and "Rental fees for mailing lists from other publishers."

In May 157, FDM obtained a $30,000 loan from the First National Bank of Vista, California. In connection with this loan Parker submitted to the bank a sworn statement that as of May 2, 1957, FDM had assets of $313,447.69, liabilities of $23,989.05, and a surplus of $289,458.64. A profit and loss statement on this document reflected a net profit of $51,096.78 from donations $135,428.67 and expenses of $84,331.89 in the period ending December 31, 1957.[4] Its real estate holdings were stated to be land with a value of $14,000 and buildings and improvements with a value of $129,000.

Neither Parker nor FDM and its related organizations maintained any formal books of account reflecting the combined or separate income and expense of the organizations. The only record of income and expense made available to respondent's agents was an incomplete set of cancelled checks and bank deposit records. These bank records were used by respondent's agents in arriving at the following figures for the years in issue:

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[4] We assume that this date should be December 31, 1956, since the statement does not appear to be of a *pro forma* nature. FDM filed no Federal income tax returns, so the record herein does not clarify this point.

Year	*Gross Income*	*Deductible Expense*
1954	$207,435.28	$ 62,064.89
1955	87,920.22	38,866.02
1956	115,260.95	80,014.52
1957	29,207.21	12,961.16
1958	34,694.23	9,832.39
1959	170,088.80	126,266.08

Duplications between bank accounts were eliminated and non-taxable items were excluded from gross receipts. Amounts which appeared to be for capital improvements or personal expenses were disallowed as expenses.

The revenue agent who examined the bank records of FDM was able to identify and classify all withdrawals except the following amounts:

Year	*Amount*	*Year*	*Amount*
1954	$34,488.51	1957	$1,300.27
1955	2,210.10	1958	5,197.21
1956	Negligible	1959	8,948.34

Respondent has conceded that depreciation was allowable as follows:

Year	*Depreciation on Assets*	*Depreciation on Building*
1954	$ 462.96	$ None
1955	1,311.55	1,250
1956	1,614.92	1,250
1957	1,629.67	1,250
1958	1,629.67	1,250
1959	1,536.37	1,250

In connection with a criminal action instituted in August 1956 against Parker for contributing to the delinquency of a minor, FDM checks were drawn for legal

services in the amounts of $1,200 in 1956, $2,350 in 1957, and in $600 in 1958; bail bond fee of $200 in 1956; and trial expenses of $50 in 1957. Parker was found not guilty of this charge after a jury trial. FDM was not a party to this action.

In November 1956, Parker instituted a civil slander suit against a medical doctor and the mother of the minor to whose delinquency he was alleged to have contributed in the above criminal action. In connection with this suit, FDM issued checks to a court reporter in 1957 in the amount of $48.20 and for legal fees in 1958 in the amount of $1,000. FDM was not a party in this suit.

On July 2 and 10, 1957, FDM checks in the amounts of $1,000 and $500 were drawn in favor of Parker. Notations on the face of the checks stated that they were in repayment of a loan. In 1958, checks totaling $445.31 were issued for items which Parker identified as "Personal" in a written schedule submitted to one of respondent's agents.

All of the above FDM checks were signed by Parker in his capacity as "SUPREME GRAND COUNSELOR & NATIONAL DIRECTOR."

FDM did not file Federal corporate or information tax returns for the years 1954 through 1959. An attorney consulted by FDM did not specifically advise Parker as to whether FDM should file Federal tax returns.

The following caveat is printed under Parker's signature on the exemption application (Form 1023) which he filed on behalf of FDM:

IMPORTANT

A mere claim or contention by an organization that it is exempt from income tax under section 101

of the Internal Revenue Code and the corresponding provisions of prior revenue acts will not relieve the organization from filing income tax returns and paying the tax. Unless the Commissioner has determined that an organization is exempt, it must prepare and file a complete income tax return for each taxable year of its existence. Accordingly, every organization that claims to be exempt should furnish the information and data specified herein, together with any other facts deemed material to the question, with the least possible delay, in order that the Commissioner can determine whether or not it is exempt. As soon as practicable after the information and data are received, the organization will be advised of the Commissioner's determination, and, if it is held to be exempt, no further income tax returns will be required.

A ruling letter dated November 16, 1955, from the exempt organizations branch of the Internal Revenue Service to FDM, advised that exemption was being denied and that "you will be required to file Federal income tax returns."

Since 1949, Parker's practice was to file his Federal income tax returns with the district director of internal revenue at Los Angeles, California. A search of the records at that office revealed no record of Parker having filed a tax return for 1956 or 1957. In April 1957, Parker mailed a signed but unverified statement styled "U. S. INDIVIDUAL TAX RETURN" with a 1956 withholding Form W-2 attached thereto, to the above office. By form letter dated June 14, 1957, they were returned to him together with a blank Form 1040, U. S. Individual Income Tax Return for 1956, with instructions to complete the Form 1040 and forward it with the

supporting documents attached. Parker did not thereafter file a Form 1040 for 1956.

FDM was not organized and operated exclusively for exempt purposes under section 501(c)(3).

The failure of FDM and Parker to file returns in the years 1954-1959 and 1956-1957, respectively, was not due to reasonable cause.

OPINION.

The principal issue for decision is whether, during the years in question, FDM was exempt from taxation under section 501(c)(3)[6] as an organization organized and operated exclusively for religious purposes. Respondent's principal contention is that FDM was not exempt because it was organized and operated for a substantial nonexempt purpose, namely, the publication and distribution by sale to the public of Parker's writings.

We agree with respondent. After a careful consideration of the extensive record in this case, we have concluded that not only was FDM not organized and operated exclusively for exempt purposes but that it was predominately a commercial enterprise. That FDM had

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[6] SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

* * * * * * *

(c) List of Exempt Organizations.—The following organizations are referred to in subsection (a):

* * * * * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, * * *

a nonexempt purpose which was "substantial in nature," *Better Business Bureau* v. U. S., 326 U. S. 279, 283 (1945), is clear.* We have set out in detail the nature of FDM's activities so that a brief summary will suffice to point out wherein it has failed to satisfy the statutory requirement.

FDM was organized in 1949 by Parker and a number of other persons (who he insisted at trial remain anonymous). Its primary purpose was stated to be "to teach the application of certain spiritual, psychological, physical, and metaphysical principals to the problems of daily life." Its bylaws provided for officers and the establishment of various subsidiary groups. Parker has occupied the position of national director since 1949 and is permitted by the bylaws to retain it until death or voluntary resignation. Except for approximately four meetings with the national secretary at her home in Roanoke, Virginia, Parker has completely controlled and dominated the activities of FDM. The national treasurer, FDM's only other officer, never attended even these meetings and at the time of trial Parker had "lost track" of her. None of the subsidiary groups contemplated by the bylaws were ever set up.

The principal activity of Parker and FDM has been the publication and distribution of numerous booklets, reports, pamphlets, newspapers and other printed materials. Under the names of Parker or FDM (and various affiliated groups which Parker considered as acting on behalf of FDM), announcements were mailed to persons whose names were on mailing lists compiled by Parker or rented or purchased by FDM. These solicitations re-

* Although not contended for by FDM, its qualification as any exempt organization under any of the other types of activities enumerated in section 501(c)(3) would fail for the same reason.

quested "donations" and provided "application forms" which were to be filled out and returned in order to receive the described materials. Those who returned the forms with "donations" were put on FDM's "membership" and mailing lists, and received further announcements. At its apex in 1955, FDM's "membership" reached 65,000.

Except for weekly Sunday school and services, and skating and swimming parties principally for members from the Valley Center area, the only FDM activity which was even arguably of a religious nature was the publication and distribution of *some* of its materials. Respondent does not question that some of the publications were of a religious nature and we are not here attempting to define what constitutes a religion. See *Golden Rule Church Association,* 41 T.C. 719 (1964); and *U.S.* v. *Seeger,* ——*U.S.*—— (1965) (33 U.S. Law Week 4247, March 9, 1965). Nor are we distinguishing between FDM's religious activities and those of other groups. *Niemotko* v. *Maryland,* 340 U.S. 268 (1951); *Fowler* v. *Rhode Island,* 345 U.S. 67 (1953); *United States* v. *Ballard,* 322 U.S. 78 (1944); and *Saint Germain Foundation,* 26 T.C. 648 (1956).

We do not understand petitioner to contend that the mailing of "announcements" was a religious activity. Cf. *Golden Rule Church Association, supra,* at pp. 728-729 and cases there cited. To defend its receipt of funds, petitioner places much reliance on the "end destination" test enunciated by the Supreme Court in the landmark case of *Trinidad* v. *Sagrada Orden,* 263 U.S. 578 (1924), citing the portion of that opinion which stated (at p. 581):

> Whether the contention is well taken turns primarily on the meaning of the excepting clause, before quoted from the taxing act. Two matters ap-

parent on the face of the clause go far towards settling its meaning. First, it recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific or educational purposes, and yet have a net income. Next it says nothing about the source of the income, but makes the destination the ultimate test of exemption.

Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. Such activities cannot be carried on without money; and it is common knowledge that they are largely carried on with income received from properties dedicated to their pursuit. This is particularly true of many charitable, scientific and educational corporations and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted. * * *

The flaw in petitioner's argument is that it ignores the remaining portion of the *Sagrada* opinion, especially the paragraph at p. 582 where the Court said:

As respects the transactions in wine, chocolate and other articles, we think they do not amount to engaging in trade in any proper sense of the term. It is not claimed that there is any selling to the public or in competition with others. The articles are merely bought and supplied for use within the plaintiff's own organization and agencies,—some of them for strictly religious use and the others for uses which are purely incidental to the work which the plaintiff

is carrying on. That the transactions yield some profit is in the circumstances a negligible factor? Financial gain is not the end to which they are directed.

The record in this case clearly shows that there was selling to the public. The fact that amounts received were denominated by petitioners as "donations" cannot obscure the fact that they were actually payments for the materials offered. Minimum "donations" were *required,* as made clear in petitioners' statement that "We do not make any exceptions under any circumstances, and we do NOT send any Courses 'C.O.D.'" Materials were offered to members of the general public and the fact that they became "members" and had their names added to FDM mailing lists, does not change their status from that of purchasers of FDM's materials. Petitioners have introduced *no* evidence to show that the vast majority of these "members" had anything more in common with each other than the purchase of materials, much of which, as will be discussed below, was of a clearly nonreligious nature. The organizations under whose names FDM and Parker mailed many items appear to be nothing more than separate fund-raising organs. Furthermore, announcements of publications were sent to thousands of persons whose names were on mailing lists purchased or rented. Little, if any, suggestion was contained in these announcements that the materials were intended to further the religious or educational purposes of FDM. Especially with regard to the money-making "plans" and puzzle contents offered by petitioners, emphasis was placed upon the financial benefits which would accrue to the individual "donors." The record is devoid of any indication that such benefits were offered by petitioners in furtherance of religious or educational ideals rather than for mutual economic bene-

fit. Unlike the *Sagrada* case, financial gain *was* the end to which the activities were directed. Similarly, the various newspapers published by FDM and Parker appear to be little more than an advertising medium for FDM's fund-raising activities and an instrument for Parker's self glorification.

The present case has much more in common with *Puritan Church—The Church of America,* a Memorandum Opinion of this Court[7] affirmed per curiam 209 F.2d 306 (C.A.D.C., 1953), than, as petitioners state that the names of the individual petitioners in each case is Parker. While the *Puritan Church* case involved more of an endeavor by its mentor, Harrison Parker, to further his personal feud with the Chicago Tribune and certain public officials, because of the extent of the domination by the individual founders as well as the nature of many of the organizations' activities and publications, the two cases afford a close analogy.

In *Scripture Press Foundation,* 152 Ct. Cl. 463, 285 F.2d 800 (1961), the Court of Claims found that a corporation which published and sold religious literature was not entitled to exemption under section 501(c)(3). As the Court said at p. 804.

> We believe the Saint Germain case [26 T.C. 648 (1956)] suggests, at least inferentially, the test for decision in this case: was the sale of religious literature by the plaintiff in this case *incidental* to the plaintiff's religious purposes? Or were plaintiff's religious objectives incidental to the sale of religious literature? * * *

Petitioners' publication and sales activities were neither incidental in amount nor were many of them incidental

[7] Dated May 22, 1951.

to the religious purposes upon which it bases its claim for exemption, Cf. *Trinidad* v. *Sagrada Orden* and *Saint Germain Foundation,* both *supra.*

Petitioners' reliance on *A. A. Allen Revivals, Inc.,* a recent Memorandum Opinion of this Court,* is misplaced. Both the quantity and nature of petitioners' operations in that case were different from those in the instant case. That the content of some of the doctrines involved in both cases are similar does not aid petitioners herein. Religious purposes for the *activities* were established in that case and have not been established here.

Our conclusion as to the nature of petitioners' activities are confirmed by many statements made by Parker. In his 1952 income tax return he characterized himself as "selling books and lecture courses by mail" through a sole proprietorship which he described as a "mail order publishing business." No mention was made in the return of any religious or educational purpose for this endeavor. In 1952 and 1953 in two "Help Wanted" advertisements, Parker states that *"My business* is in the field of Direct Mail Advertising and Promotion"; *"My customer list* covers the Nation"; "several thousand men and women throughout America *paid me* a total of fifty thousand dollars during 1952"; and refers to *"my* organization, which is now the second largest in the field in the United States." [Emphasis supplied.] No mention is made of FDM, which although not incorporated until 1955, was operating since 1949. Nor did petitioners make any showing that the activities carried on by Parker under FDM's name before and after incorporation were any different. His statement in a letter to the San Diego Better Business Bureau in March 1953 that, "I am a *mail order*

* T.C. Memo. 1963-281.

publisher and *in business to stay*. Last year I spent a total of a little more than ten thousand dollars for postage to mail literature and lesson material to *SATISFIED CUSTOMERS*" [emphasis supplied] reflects Parker's primary concern. The record in this case permits of no other conclusion than that FDM was engaged in a substantial non-exempt activity and is not entitled to the exemption which it claims. *Better Business Bureau* v. *U.S., supra.*

Because FDM was not an exempt organization during the years in question, the amounts received by it during those years constitute gross income. Petitioners have not introduced any evidence to overcome the presumptive correctness of the amounts determined by respondent, or shown that any amount thereof were gifts. We sustain respondent's determinations, as modified by concessions as to allowable deductions. Because of our resolution of this issue, we need not consider respondent's alternative contention that FDM is subject to the unrelated business income tax imposed by section 511.

Respondent duplicated many items of income in the notices of deficiency sent to FDM and Parker as a result of bank deposits in various names. Since we have found these items to have been income to FDM, respondent's determination that they were income to Parker is incorrect. There remains, however, the question of whether certain other items constitute taxable income to Parker.

The first item involves two FDM checks drawn by Parker in 1957 in the amounts of $1,000 and $5,000. Notations on the face of the checks state that they were in repayment of a loan. Parker contends that he loaned these amounts to FDM from sums he received from

members of FDM as "love offerings." This contention is unsupported by anything other than his own testimony. The notebook in which he claims to have kept a record of such gifts was not introduced at trial. Cf. *A. A. Allen Revivals, Inc., supra.* No promissory notes or memoranda of the "loans" were even mentioned at trial. In view of the high degree of control which Parker exercised over FDM's finances, and the extent to which funds were commingled in bank accounts under the names of Parker, FDM and its affiliated organizations, we cannot accept his uncorroborated testimony. His contention that respondent failed to show he had personally accumulated sufficient wealth to substantiate the disputed receipts of income (most of which related to the items duplicated to FDM and found taxable to it) is without merit.[9] There is no burden upon respondent to show such an accumulation. Because of Parker's failure of proof, we sustain respondent's determination as to this item.

The second item relates to FDM checks totalling $445.31 which were issued for items Parker identified as "personal" in a written schedule submitted to one of respondent's agents. The third concerns bank account withdrawals which respondent's agents were unable to identify and classify, in the amounts as follows:

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[9] The record indicated that Parker was paid a salary of $1,200 by FDM in the years in issue. While his testimony is to the effect that his expenses (most of which were paid by FDM) were minimal, this testimony is incomplete, vague, and in several respects inconsistent. For example, he states at page 171 of the transcript that he had no transportation expenses because FDM's staff car was available for all business. Yet at page 182, in speaking of another issue he refers to conferences in Washington, D. C., with an attorney where he "usually stayed only a few days and then flew back."

Year	*Amounts*
1954	$34,488.51
1955	2,210.10
1956	Negligible
1957	1,300.27
1958	5,197.21
1959	8,948.34

Respondent determined that these amounts constituted taxable income to Parker. As with the prior items, we reject Parker's sole contention that respondent's agents did not show that he acculmulated the wealth indicated by these items as Parker has introduced no evidence as to either set of checks. We sustain respondent's determination except as to the unidentified withdrawals in 1954, Parker's 1954 taxable year is not before us, so that we have no jurisdiction to determine a deficiency as to that year.

The last items determined by respondent to constitute taxable income to Parker are a series of FDM checks issued in connection with litigation. In August 1956, a criminal action was instituted against Parker for contributing to the delinquency of a minor. In November 1956, Parker brought a civil slander suit against a medical doctor and the mother of the minor to whose delinquency he was alleged to have contributed. FDM was not a party in either action. Parker was acquitted in the criminal action after a jury trial. The FDM checks in question were issued to pay legal and incidental expenses in connection with the two actions.

Parker contends that these amounts are not income to him because they represent expenses incurred by him in his capacity as supreme grand counselor of FDM and

that any damages which might have been collected in the slander suit would accrue to the benefit of FDM. We disagree. Although at trial Parker alleged that the criminal action (as well as the Post Office fraud actions and the Internal Revenue Service's action herein) was an effort to discredit and destroy FDM, we conclude that the litigation expenses discharged personal obligations of Parker and constitute income to him. *Frank J. Matula, Jr.*, 40 T.C. 914 (1963); and *Irving Sachs*, 32 T.C. 815 (1959), affd. 277 F.2d 879 (C.A. 8, 1960). FDM was not a party to either action; at best, the benefits which it might have realized from these actions were incidental to the personal benefits to Parker. No allocations of the respective benefits has been made and we decline to speculate as to one. Cf. *Aaron Michaels*, 12 T.C. 17, 20 (1949).

The fourth issue is whether or not FDM is liable for additions to tax imposed by sections 6651(a) and 6653(a) for failure to file returns and for underpayment of tax from 1954 through 1959. During these years FDM filed neither information nor corporate tax returns. Although an attorney whom Parker consulted may have indicated to Parker that FDM was an exempt organization, he never specifically advised Parker not to file returns for FDM. In view of this, the caveat in the FDM exemption application which Parker filed, and the ruling letter denying exemption, which stated that FDM would have to file Federal income tax returns, we find no basis for holding that FDM's failure to file was due to reasonable cause. The fact that Parker considered FDM to be exempt does not constitute reasonable cause. *Puritan Church—The Church of America, supra.* Since FDM was not an exempt organization during the years in question, the understatements are apparent. We sustain respondent's determination on this issue.

The final issue is whether or not Parker is liable for the additions to tax imposed by section 6651(a) for failure to file returns in 1956 and 1957. A search of the records in the Los Angeles district director's office, where Parker filed his Federal income tax returns since 1949, failed to disclose any record of returns having been filed by him for 1956 or 1957. In April 1957, Parker mailed a signed but unverified statement styled "U.S. INDIVIDUAL TAX RETURN," with a 1956 W-2 withholding form attached thereto, to the above office. This was returned to Parker with a blank Form 1040 with instructions that he complete the official form and forward it with the supporting documents attached. Parker did not thereafter file a Form 1040 for 1956.

Parker's explanation for not returning the Form 1040 for 1956 was that "To the best of my recollection I did not see it when it came in. It is entirely likely that one of the employees at the Foundation at the time was receiving and opening mail and for some reason it was not called to my attention * * *." This does not constitute reasonable cause to fail to file the proper forms required by section 6011(a), or to resubmit his "statement" with the form provided to him.

Parker's only testimony with regard to a 1957 return was that he "believed" he had filed such a return although he had no income for that period. He produced no copy of a return at trial. The district director's office shows no record of one having been filed. Parker's explanations are insufficient to sustain his burden of showing reasonable cause for his failure to file 1956 or 1957 returns, and we sustain respondent's determination on this issue.

Decisions will be entered under Rule 50.

IN THE UNITED STATES COURT OF APPEALS
FOR THE 8TH CIRCUIT
PETITION FOR REVIEW OF DECISION OF THE
TAX COURT OF THE UNITED STATES
THE PARTIES SEEKING THIS REVIEW
ARE THE PETITIONERS:

MERLE E. PARKER (An individual)
and
THE FOUNDATION FOR DIVINE MEDITATION, INCORPORATED (A non-profit religious Corporation)

These cases were consolidated by motion of PETITIONERS granted by the Tax Court of the United States, the Hon. Russell E. Train, Judge, on October 23, 1963, with agreement by Counsel for RESPONDENT, and were titled in the Tax Court:

MERLE E. PARKER, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No. 2600-62
AND THE FOUNDATION FOR DIVINE MEDITATION, INCORPORATED Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No. 2601-62

This PETITION FOR REVIEW is being brought to the United States Court of Appeals for the 8th Circuit by STIPULATION between Petitioners and Respondent, pursuant to Section 7482(b)(2) of the Internal Revenue Code of 1954, said STIPULATION having been filed in the TAX COURT on or about the 15th day of October, 1965.

THE TAX PERIODS INVOLVED ARE:

For Merle E. Parker:

Calendar Years 1955, 1956, 1957, 1958, and 1959.

For The Foundation For Divine Meditation, Incorporated:

Calendar Years 1954, 1955, 1956, 1957, 1958, and 1959.

DESCRIPTION OF THE CONTROVERSY:

THE PRIMARY CONSIDERATION in this controversy is whether a Religious Corporation formed under the general non-profit corporation laws of the State of California, and which used funds which it solicited primarily through the use of fund raising appeals sent through the U. S. Mails, to build a hall of worship and administration headquarters at Valley Center, California, valued at approximately $100,000, is exempt from payment of income taxes under provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

SECONDARY CONSIDERATIONS:

1. Was the Religious Corporation exempt from filing "Information Returns" under Section 6033 of IRC?

2. Were certain items "taxable income" to Dr. Merle E. Parker, National Director and Presiding Officer of the Corporation, (The individual petitioner here), including certain litigation expenses and certain withdrawals from the Corporation's bank accounts which were classified as "unidentified" by IRS investigators?

3. Was a loan of $1,500 made to the Corporation by its Presiding Officer "taxable income" to him when it was repaid?

4. Was the action of an "administrative official" of the IRS in 1955 tantamount to a prior restraint upon the exercise and practice of the Corporation petitioner's religion, and a violation of the First Amendment to the Constitution?

5. Is the assessment of "income taxes" upon the income of the Petitioner Corporation confiscatory in nature and a violation of the 5th Amendment?

6. Is the assessment against Merle E. Parker, (the individual petitioner) based purely upon conjecture and fabrication, confiscatory in nature, and a violation of the 5th Amendment?

7. Is the entire "case" a subterfuge and part of a pattern which has developed in recent years to stamp out and destroy a certain selected group of "unpopular" and "unorthodox" religious movements?

8. Are either of the PETITIONERS liable for certain penalties and additions under Section 6651(a) or 6653(a), IRC, 1954?

STATEMENT OF POINTS UPON WHICH PETITIONERS RELY:

1. PETITIONER CORPORATION was organized and operated exclusively for the purposes spelled out by the Congress and incorporated in the exempting provisions of the Taxing Act, as contained in Sec. 501 (c)(3) of the Internal Revenue Code of 1954.

2. The primary source of income of Corporation during the years in controversy was from gifts, donations and "love offerings", and such income is exempt by law from income taxes, irrespective of any and all other considerations.

3. No part of the net income of Petitioner Corporation inured to the benefit of any private individual or shareholder, within the meaning of the exempting clause of the Taxing Act, during any of the years in controversy.

4. Refusal by an administrative employee of the Internal Revenue Service in 1955 to issue a "Certificate of Exemption" to Corporation Petitioner was arbitrary, capricious, discriminatory, contrary to the statutory provisions of the IRC, tantamount to a prior restraint upon the exercise and practice of Petitioner's religion, a denial of equal justice under the law, and a violation of the rights of the Petitioner under the First and the Fifth Amendments to the Constitution of the United States.

5. To condition the solicitation of aid for the perpetuation of religious views or systems upon a "license", the grant of which rests in the exercise of a determination by an "administrative authority" as to what

is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution; and any statute authorizing previous restraint upon the exercise of a guaranteed freedom by an administrative official is obnoxious to the Constitution.

6. Petitioner was not bound by an illegal and arbitrary "ruling" of an administrative official acting under color of law, but violating the letter and the spirit of the applicable statute.

7. The availability of a judicial remedy for abuses in a system of licensing still leaves that system one of previous restraint which, in the field of free speech and the establishment and practice of religion, is inadmissible.

8. When a Court undertakes to review the doctrines, teachings, tenets, and precepts of a religious organization, and to declare what such organization may and may not teach in order to qualify for the exemption provided by Statute, it enters a forbidden domain, and attempts to sit as a judge of exegesis, contrary to the letter and the spirit of the First Amendment.

9. The decision of the Tax Court was based in whole or in part upon a misinterpretation of a decision of the United States Supreme Court, long considered a "landmark" case in controversies of this kind.

10. The payment of a counsel to defend the presiding officer of a religious corporation against a false accusation which arose directly because of his duties as a youth counselor for the corporation, and where the defense is successful, is not "taxable income" to the officer. Payment of such fees is comparable

to funds received by a physician or surgeon under the terms of a Malpractice Suit Insurance Policy.

11. The mere declaration by a government accountant that he could not determine the useage of certain withdrawals from a religious corporation's account is not grounds for an assumption that the custodian of the account used the funds for his personal benefit, in the absence of any evidence that he did, and more especially in the presence of substantial evidence that he did *NOT*.

12. The refusal by a Director of Internal Revenue to accept a typewritten facsimile of a form 1040, when submitted in good faith, is not grounds for assessing a taxpayer a penalty for failing to file a Return.

13. When the possibility does exist that a tax return could have been lost in the office of a District Director of Internal Revenue, when about three million such returns were received in that office in one year, the benefit of the doubt should be given the taxpayer.

14. In arriving at the decision in these two consolidated cases, the Tax Court considered everything—EXCEPT THE LAW AND THE FACTS!

Respectfully submitted this 26th day of October, 1965.

Dr. Merle E. Parker, *pro se*
and attorney in fact for
THE FOUNDATION FOR
DIVINE MEDITATION, INC.

TAX COURT OF THE UNITED STATES

Merle E. Parker, Petitioner v. Commissioner of Internal Revenue, Respondent	Docket No. 2600-62

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Ap:LA:AA:CW (MK)90-D, dated April 9, 1962, and as a basis for his case alleges as follows:

1. The petitioner is an individual, Dr. Merle E. Parker, with residence at Cedar Heart of the Ozarks, Thornfield, Missouri. The returns for the periods here involved were filed with the District Director for the Los Angeles District.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the Petitioner on April 9, 1962.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar years ended on December 31st, 1955, 1956, 1957, 1958 and 1959, aggregating $87,526.11, with penalties aggregating $5,429.71, of which the entire amounts are in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

a. The petitioner did not, at any time during the years specified in the deficiency receive any taxable income, in any form, upon which all income taxes were not fully paid.

b. The figures set forth in the deficiency are fabrications, based upon the theory that the petitioner is an "alter ego" of a duly formed Religious Corporation, operating since 1949 under a Charter issued by the Secretary of State of the State of California.

5. The facts upon which the petitioner relies as a basis of this case are as follows:

a. The petitioner did not receive any of the amounts set forth in the notice of deficiency, in any form, or at any time.

b. The petitioner has paid all income taxes on salaries or other taxable income received during the years in dispute; and therefore, owes nothing.

c. The petitioner is informed and believes, and upon such information and belief, alleges that the Department of Internal Revenue is being used by certain persons, organizations or corporations as a means of harassing, defaming and persecuting both the petitioner, and the Religious Corporation of which he is the National Director, said Religious Corporation being THE FOUNDATION FOR DIVINE MEDITATION, INCORPORATED, with headquarters at Valley Center, California.

Wherefore, the petitioner prays that this Court may try the case and forever restrain the Commissioner of Internal Revenue from collecting any amount whatsoever from the petitioner; and petitioner further prays that this Court will join this case with the case concerning THE

FOUNDATION FOR DIVINE MEDITATION, INCORPORATED, Post Office Box 287, Valley Center, California, due to the fact that vital and relevant matters are interwoven in the two cases, and justice will best be served by so joining the cases.

/s/ Dr. Merle E. Parker
The Rev. Dr. Merle E. Parker, Petitioner
Cedar Heart of the Ozarks, Thornfield, Mo.

TAX COURT OF THE UNITED STATES

The Foundation For Divine Meditation, Incorporated, Petitioner v. Commissioner of Internal Revenue, Respondent	Docket No. 2601-62

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Ap:LA:AA:CW (MK)90-D, dated April 9, 1962, and as a basis for his case alleges as follows:

1. The petitioner is a NON-PROFIT RELIGIOUS CORPORATION, with principal office and mail address being Post Office Box 287, Valley Center, California. Since petitioner is by statute exempt from filing income tax returns, no such returns were filed; however, petitioner's principal office is situated in the Los Angeles Internal Revenue District.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the Petitioner on April 9, 1962.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar years ended on December 31st, 1954, 1955, 1956, 1957, 1958 and 1959, aggregating $140,336.50, with penalties aggregating $42,100.96, of which the entire amounts are in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

a. The petitioner is a NON-PROFIT RELIGIOUS CORPORATION, incorporated in February, 1955, in the State of California, and in continuous existence since October 24, 1949 as an UN-incorporated Association duly registered as such with the Secretary of State of the State of California, prior to the date of INCORPORATING; and by law and long established precedent, petitioner is EXEMPT from payment of income taxes.

b. The deficiency assessed by the Commissioner is an illegal assessment.

c. The petitioner does not owe any income tax of any amount for any of the years above cited, or for any other years whatsoever.

5. The facts upon which the petitioner relies as a basis of this case are as follows:

a. Petitioner is a NON-PROFIT RELIGIOUS CORPORATION, and as such, is completely exempt from payment of income taxes.

b. Petitioner was duly chartered by the State of California in February, 1955, as a NON-PROFIT RELIGIOUS CORPORATION, and was registered as an UNincorporated, NON-PROFIT ASSOCIATION by the Secretary of the State of California, in October, 1949. Petitioner has had continuous existence since 1949, as above outlined.

c. Petitioner has been duly recognized as a NON-PROFIT ORGANIZATION by the United States Post Office Department since 1954, and currently holds nonprofit mail permit Number 1 at the Post Office at Valley Center, California.

d. The principal source of income of Petitioner is from gifts, tithes, bequests and donations.

e. The income upon which the Commissioner of Internal Revenue seeks to make a deficiency assessment was derived from the above cited sources; said sources being, in and of themselves, exempt from income taxes, irrespective of any and all other considerations.

f. No part of any income of Petitoner has ever inured to the benefit of any officer, member or individual.

g. Petitioner has been informed and believes, and upon such information and belief alleges that certain individuals, organizations and/or corporations, including but not necessarily restricted to the so-called "Better Business Bureau" have attempted and are attempting to use an agency of the United States Government, viz: The De-

partment of Internal Revenue, to harass, defame, persecute and destroy a Religious Organization because certain of the precepts, principles, doctrines and tenets of that Religious Organization are considered to be "unorthodox", and contrary to those held and taught by the majority of so-called "Christian" churches in the United States of America.

h. If the deficiency assessment claimed by the Commissioner of Internal Revenue is allowed to stand, Petitioner will be deprived of rights under the 1st, 4th, 5th, and 14th Amendments to the Constitution of the United States of America.

Wherefore, Petitioner prays that this Court may try the case and forever restrain the Commissioner of Internal Revenue from collecting any amount whatsoever from the Petitioner; and Petitioner further prays that this Court will join this case with the case concerning DR. MERLE E. PARKER, whose residence is Cedar Heart of the Ozarks, Thornfield, Missouri, due to the fact that vital and relevant matters are interwoven in the two cases, and justice will best be served by so joining the two cases.

/s/ Dr. Merle E. Parker

THE FOUNDATION FOR DIVINE MEDITATION, INC.

by The Reverend Dr. Merle E. Parker,
National Director.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 812

MERLE E. PARKER, AN INDIVIDUAL, AND THE FOUNDATION FOR DIVINE MEDITATION, INCORPORATED, A CORPORATION, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Dr. Merle E. Parker established the Foundation for Divine Meditation (FDM) in 1949 for the stated purpose of teaching "the application of certain spiritual, psychological, physical, and methaphysical principals to the problems of daily life" (Pet. App. 38). Parker competely dominated and controlled the activities of FDM, which he described as a "mail order publishing business" (Pet. App. 24, 53–55, 56–57, 58, 68–69).

In 1955, FDM was incorporated as a nonprofit corporation in California, and it sponsored recreational activities and weekly religious services for three of the

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eleven years between 1949 and 1959 (Pet. App. 21, 41, 55, 64). Its principal activity during that period, however, was the publication and sale to the public of various writings by Parker (Pet. App. 20, 22, 24–25, 40, 62). Those writings fall into three general categories: (1) courses in self-improvement ("Dynamic Speed Hypnosis"), (2) programs offering financial reward (how to grow ming trees on window sills or raise earthworms for profit), and (3) promotions of contests and certain causes ("Gospel Treasure Hunt" and "The Cigarette and You") (Pet. App. 22–24, 41–53, 66).

From commercial mailing lists, FDM obtained names of individuals to whom it would send circulars promoting its publications (Pet. App. 40–41, 63). FDM's membership consisted of those who responded to the circulars and who bought its publications (Pet. App. 40–41, 64, 66). Between 1954 and 1959, FDM's income ranged from an annual low of approximately $29,000 to an annual high of $207,435. In 1957, FDM had a surplus of nearly $290,000 (Pet. App. 24, 58, 59).

1. The principal question presented is whether FDM is exempt from income tax under Section 501 (c)(3) of the Internal Revenue Code of 1954, as a corporation "organized and operated exclusively for religious * * * purposes." Both lower courts applied the standard set forth in *Better Business Bureau* v. *United States*, 326 U.S. 279—that the existence of a substantial nonexempt purpose invalidates the exemption even if the organization has an exempt purpose—and they denied the exemption. The Tax Court found that FDM "was organized and operated for a substan-

tial nonexempt purpose, namely, the publication and distribution by sale to the public of Parker's writing" and that FDM "was predominantly a commercial enterprise" (Pet. App. 62). The court of appeals affirmed the denial of exemption in view of the "substantial nature of the non-religious purpose" of FDM which was "commercial rather than * * * religious" (Pet. App. 25).

2. The decisions below do not, as petitioners contend (Pet. 3, 8–10), conflict with *Trinidad* v. *Sagrada Orden,* 263 U.S. 578.[1] That case dealt with a religious organization which obtained the bulk of its income from investments and a trivial amount of income from the sale of wine and chocolate to its member churches. Although this Court suggested that tax exemption depended not on the "source of income" but rather upon its "destination" (263 U.S. at 581), a careful distinction was drawn between the passive holding of income-producing property and the active conduct of trading activities. The Court noted that the bulk of the taxpayer's income there came from rents, dividends, and interest, and that in using income from such investments, the organization was advancing its religious purposes, "not stepping aside from them or engaging in a business pursuit" (263 U.S. at 582). The Court found that trading in wine and chocolate was "purely

[1] *University* v. *People*, 99 U.S. 309, also relied on by petitioners (Pet. 3, 7–8), is inapposite. That case predated the modern federal income tax. This Court held that taxation by Illinois of certain real property of Northwestern University impaired the obligation of contract because the State, which had chartered the university, had promised it perpetual exemption from tax.

incidental to the pursuit of those [religious] purposes and is in no sense a distinct or external venture." 263 U.S. at 581.[2]

A taxpayer whose substantial activities "amount to engaging in trade" such as "selling to the public or in competition with others" is not, however, within the exempt class, even though it also performs religious activities. *Scripture Press Foundation* v. *United States*, 285 F. 2d 800 (Ct. Cl.), certiorari denied, 368 U.S. 985; cf. *People's Educational Camp Society, Inc.* v. *Commissioner*, 331 F. 2d 923 (C.A. 2), certiorari denied, 379 U.S. 839. The reasons which warranted this Court's holding in *Sagrada Orden* that the organization there involved was exempt—the incidental nature of the commercial activities—compel the opposite conclusion here, where both lower courts found that the predominant purpose of the organization was commercial (Pet. App. 24–25, 62). The non-religious nature of FDM's publishing activities is obvious from the titles of the works being sold and from the subject matter of the programs and courses it sponsored.

3. Petitioners' claim (Pet. 3, 10–13) that the decision

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[2] The crux of the opinion is to be found in the following language (263 U.S. at 582):

"As respects the transactions in wine, chocolate and other articles, we think they do not amount to engaging in trade in any proper sense of the term. It is not claimed that there is any selling to the public or in competition with others. The articles are merely bought and supplied for use within the plaintiff's own organization and agencies—some of them for strictly religious use and the others for uses which are purely incidental to the work which the plaintiff is carrying on. That the transactions yield some profit is in the circumstances a negligible factor. Financial gain is not the end to which they are directed."

below violates First Amendment rights lacks merit. The Free Exercise Clause of the First Amendment does not bar the Commissioner and the courts from comparing the claimed purposes of an assertedly "religious" organization with the purposes revealed by its activities. In considering the nature of FDM's activities, both lower courts cautiously resolved doubts in favor of FDM (Pet. App. 21, 22–23, 25, 64, 66–67). Nonetheless, each reached the conclusion that FDM was predominantly a commercial enterprise rather than a religious organization (Pet. App. 22, 24–25, 62, 67–68).

4. Nor is there substance to petitioner Parker's contention that it was impermissible for the courts below to conclude that "unidentified withdrawals" were taxable to him when there was no direct evidence that he had received the money (Pet. 13). Neither Parker nor FDM kept books or records, and their funds were commingled (Pet. App. 26, 58, 70). The revenue agents reconstructed FDM's income from an incomplete set of cancelled checks and bank deposits and were able to classify all of the withdrawals from FDM's bank account except the withdrawal of amounts authorized by Parker between 1955 and 1959 totalling $17,655.92 (Pet. App. 26, 58–59, 70–71). The Commissioner determined that those amounts were taxable to Parker, who had complete and unfettered control over FDM's finances (Pet. App. 27, 70–71). In these circumstances, the burden of proof was properly shifted to Parker. *Reinecke* v. *Spaulding,* 280 U.S. 227, 232–233; *ARC Realty Co.* v. *Commissioner,* 295 F. 2d 98 (C.A. 8); *Marcella* v. *Commissioner,* 222 F. 2d

878 (C.A. 8). When he failed to produce any evidence, both courts below correctly upheld the Commissioner's determination (Pet. App. 27, 70–71). *Burnet* v. *Houston*, 283 U.S. 223.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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